TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED FEBRUARY 8, 1906.

(20,091.)

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At a stated term of the Circuit Court of the United States within and for the Sixth Judicial Circuit and Western Division of the Southern District of Ohio, begun and held at the Court Rooms in the City of Cincinnati, on the first Tuesday of October, being the Third day of that month in the year of Our Lord, One Thousand, Nine Hundred and Five, and in the One Hundred and Thirtieth year of the Independence of the United States of America.

Present the Honorable Albert C. Thompson, District Judge Sitting and holding Circuit Court.

Among the proceedings had were the following to-wit:

THE INTERSTATE COMMERCE COMMISSION, Complainant,

vs.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; and THE BALTIMORE & OHIO RAILROAD COMPANY, Respondents.

Be it remembered that heretofore, to-wit: on the 20th day of July, in the year of Our Lord, One Thousand Nine Hundred and Four, came the Complainant by its Solicitor Sherman T. McPherson, Esq., and filed in the Clerk's Office of the Court aforesaid, its certain Bill of Complaint, in this cause against the Respondents herein, which said Bill of Complaint is clothed in the words and figures following to-wit:

1 *Bill of Complaint.*

In the Circuit Court of the United States for the Southern District of Ohio.

In Equity. No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,

v.

THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY; and THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendants.

To the Circuit Court of the United States Sitting in Equity Within and for the Southern District of Ohio:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an

act of the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and an act approved February 11, 1893, and an act approved February 19, 1903, humbly complaining, shows:

I.

That the Cincinnati, Hamilton and Dayton Railway Company is a corporation organized and existing under the laws of the State of Ohio, having its principal office in the city of Cincinnati, in said State of Ohio; that the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company is a corporation organized and existing under the laws of the States of Pennsylvania, Ohio, Indiana and Illinois, having its principal office in the city of Pittsburg, in said State of Pennsylvania; that the Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office in the city of Philadelphia, in said State of Pennsylvania; that the Cleveland, Cincinnati, Chicago and
2 St. Louis Railway Company is a corporation organized and existing under the laws of the States of Ohio, Indiana, and Illinois, having its principal office in the city of Cincinnati, in said State of Ohio; that the Lake Shore and Michigan Southern Railway Company is a corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio Michigan, Indiana, and Illinois, having its principal office in the city of Cleveland, in said State of Ohio; that the New York Central and Hudson River Railroad Company is a corporation organized and existing under the laws of the State of New York, having its principal office in the city of Albany, in said State of New York; that the Baltimore and Ohio Southwestern Railroad Company is a corporation organized by consolidation and existing under the laws of the States of Ohio and Indiana, having its principal office in the city of Cincinnati, in said State of Ohio; and that the Baltimore and Ohio Railroad Company is a corporation organized and existing under the laws of the State of Maryland, having its principal office in the city of Baltimore, in said State of Maryland.

II.

That the above-named defendants were on December 15, 1899, and since have been, and are, common carriers engaged in the transportation of persons and property by railroad under joint through rates and as members of continuous lines between different points in the United States, and particularly that they were and since have been so engaged in the transportation of common or laundry soap in carload quantities, and in less than carload quantities, between various points in the several States of the United States within that portion of the United States which is known and described as Official Classification territory—that is to say, approximately, that territory bounded on the north by the northern boundary of the United States, on the east by the Atlantic Ocean, on the south by the Potomac and

Ohio rivers, and on the west by the Mississippi River—and divers other points in the United States, and as such common carriers, and in respect to such transportation were, and are, subject to the provisions of the said act to regulate commerce and the amendments thereto.

III.

That on February 24, 1900, the Procter & Gamble Company, a corporation organized under the laws of the State of Ohio, filed, under section 13 of the said act, to regulate commerce, a petition and complained to the petitioner herein, the Interstate Commerce Commission, alleging violations on the part of said defendants of certain portions of said act as at large and more fully appears in and by the said complaint on file in the office of said Commission, a copy whereof is hereunto annexed and made a part of this bill of
3 complaint, marked "Exhibit A," and that a copy of said complaint, Exhibit A, was duly forwarded by said Commission to each of said defendants, as required by section 13 of said act.

IV.

That on various dates between March 14, 1900, to April 4, 1900, said defendants filed answers to the said complaint, Exhibit A hereto, as at large and more fully appears in and by said answers on file in the office of the petitioner herein, copies of which answers are hereto annexed and made a part of this petition, marked Exhibits B, C, D, E, F, and G.

V.

That thereafterwards the said cause, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the petitioner herein, the said Interstate Commerce Commission, at various times and places at which the said Procter & Gamble Company and the said defendants herein duly appeared, by their attorneys, and at the said hearings testimony was taken in behalf of the said parties; and that from October 21, 1901, to October 24, 1901, the said parties appeared, by their attorneys, at Washington, D. C., and argument was had in behalf of all parties in interest.

VI.

That on April 10, 1903, the petitioner herein duly determined the matter in controversy between the said parties before it and made a report in writing in respect thereof, setting forth the conclusions it had reached and also the findings of facts upon which the said conclusions were based, as at large and more fully appears in and by the report of said Commission, a copy whereof is hereunto annexed and made a part of this petition as Exhibit H.

VII.

That afterwards, on May 14, 1903, the petitioner duly formulated an order, which said order, in conformity with the conclusions of

petitioner, set forth in its said report (Exhibit H hereto), directed said defendants to cease and desist, on or before May 15, 1903, from charging, demanding, collecting, or receiving for the transportation of common or laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by them for the transportation of articles designated as "third class," in their established freight classification, called and known as the "Official Classification," which said 20 per cent. less than
4 third-class rates for the transportation of common or laundry soap in less than carload quantities are found and determined in and by said report and opinion of the said Commission to be in violation of the said act to regulate commerce, as more fully appears in and by said order, a copy whereof is hereunto annexed and made a part of this petition as Exhibit I, and petitioner alleges that said order now remains in full force and effect.

VIII.

That afterwards the petitioner, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report and opinion (Exhibit H hereto), together with a copy of the order, (Exhibit I hereto), to be delivered to each of the said defendants herein, and petitioner shows that the said defendants, unmindful of their duty in that regard, have, through their officers, servants, and attorneys, wholly disregarded and set at naught said order of petitioner (Exhibit I hereto), and have willfully and knowingly violated and disobeyed the same, and still do neglect and refuse to comply with the same or any part thereof.

IX.

And the petitioner charges that the action of the defendants in raising the classification of common or laundry soap in less than carload quantities, on December 29, 1899, from fourth class to third class, and subsequently on March 10, 1900, changing the classification of common or laundry soap in less than carload quantities to 20 per cent. below third-class rates, the same being more than fourth-class rates, was in violation of the act to regulate commerce; and petitioner further charges that the rates charged by the defendants since December 29, 1899, for the transportation of common or laundry soap, in less than carload quantities, are in violation of section 1 of the act to regulate commerce, in that they are unreasonable and unjust; and said rates are, and have been, in violation of section 3 of said act, in that said rates, based upon the classification aforesaid, give an undue and unreasonable preference or advantage to other descriptions of traffic, and subject common or laundry soap in less than carloads to an undue prejudice and disadvantage. The petitioner further charges that the change in classification by the defendants, made effective about December 29, 1899, whereby common or laundry soap in less than carload quantities was changed from fourth to third class, and the change in classification by the defendants, made effective March 10, 1900, whereby common or

laundry soap in less than carload quantities was charged more than fourth-class rates, to wit, 20 per cent. below third-class rates, were in violation of said act to regulate commerce, in that said changes were unreasonable and unjust, and result in unlawful discrimination and prejudice against common or laundry soap in less than carload quantities, and against localities in Official Classification territory, wherein commodities are produced and transported, and against producers, shippers, dealers, and consumers in said territory.

Wherefore petitioner prays:

1. That a subpœna or other suitable process may issue, according to the course of equity, requiring the said Cincinnati, Hamilton and Dayton Railway Company; the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company; the Pennsylvania Railroad Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; the Lake Shore and Michigan Southern Railway Company; the New York Central and Hudson River Railroad Company, the Baltimore and Ohio Southwestern Railroad Company, and the Baltimore and Ohio Railroad Company to appear at such time and place as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things hereinabove stated and charged as fully and particularly as if each of said defendants were specially interrogated in regard thereto; but oath to said answers is hereby waived.

2. That upon the filing of this petition an order may be made by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed, pending the cause, as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed, pending the cause, as may be necessary for the prosecution of all such inquiries as the court may think needful and lawful to enable it to form just judgment on the matters and things stated and charged in the foregoing petition.

5. That upon the final hearing hereof a decree may be entered granting to petitioner a writ of injunction or other proper process, mandatory or otherwise, restraining the said defendants, the Cincinnati, Hamilton and Dayton Railway Company; the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company; the Pennsylvania Railroad Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; the Lake Shore and Michigan Southern Railway Company; the New York Central and Hudson River Railroad Company; the Baltimore and Ohio Southwestern Railroad Company, and the Baltimore and Ohio Railroad Company, and each of them, and their respective officers, servants, and agents, from further continuing in their violation of and disobedience to the said order of the petitioner, the Interstate Commerce Commission.

6. That a decree may be entered requiring the defendants, the Cincinnati, Hamilton and Dayton Railway Company; the Pitts-

burgh, Cincinnati, Chicago and St. Louis Railway Company;
6 the Pennsylvania Railroad Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; the Lake Shore and Michigan Southern Railway Company; the New York Central and Hudson River Railroad Company; the Baltimore and Ohio Southwestern Railroad Company, and the Baltimore and Ohio Railroad Company, and each of them, to pay such sum of money, not exceeding $500, for every day after a day to be named in such decree that they shall respectively fail to obey the said injunction or other proper process.

7. That a decree may be entered requiring said defendants, the Cincinnati, Hamilton and Dayton Railway Company; the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company; the Pennsylvania Railroad Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; the Lake Shore and Michigan Southern Railway Company; the New York Central and Hudson River Railroad Company; the Baltimore and Ohio Southwestern Railroad Company, and the Baltimore and Ohio Railroad Company to pay the costs of this proceeding, and reasonable counsel fees.

8. For such other and further relief as to the court may seem meet and justice and the equities of the cause may require.

THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
The Secretary thereof, thereunto duly authorized.

[SEAL.]

SHERMAN T. McPHERSON,
United States Attorney S. D. O.

7 & 8

EXHIBIT A.

9 THE PROCTER & GAMBLE COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Complainant,

vs.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY, a Corporation under the Laws of the State of Ohio; THE PENNSYLVANIA RAILROAD COMPANY, a Corporation under the Laws of the Commonwealth of Pennsylvania; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, a Corporation under the Laws of the State of New York; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, a Corporation under the Laws of the State of Ohio, and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation under the Laws of the State of Maryland, Respondents.

Petition to the Interstate Commerce Commission.

I.

Your petitioner, the Procter & Gamble Company, a corporation organized and existing under the laws of the State of New Jersey, and a manufacturer and seller of common soap, candles, and glycerin, having its manufactory and principal place of business at Ivorydale and Cincinnati, in Hamilton County, in the State of Ohio, and being a continuous shipper of said articles of its manufacture over the railways of the defendants from Ivorydale and Cincinnati, Ohio, to points in other States upon the lines of said and other connecting railroads, being common carriers, and with them under a common control, management, or arrangement for continuous carriage, and purposing and intending in good faith to continue the manufacture of and trade in said articles and said shipments thereof, brings this petition against the Cincinnati, Hamilton and Dayton Railway Company, a corporation organized and existing under the laws of the State of Ohio; the Pittsburgh, Cincinnati,
10 Chicago and St. Louis Railway Company, a corporation organized and existing under the laws of the State of Ohio; the Pennsylvania Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, all three of which railroad companies are common carriers, and under a common control, management, or arrangement for continuous carriage or shipment between themselves and with other connecting railroads, are engaged in the transportation of property wholly by rail between Ivorydale, in Ohio, upon the line of said Cin-

cinnati, Hamilton and Dayton Railway, and Harrisburg and Philadelphia, in Pennsylvania, New York, in the State of New York, and to all points in States other than Ohio, upon the lines of the said railroads and other connecting railroads, and as such carriers, in respect to said traffic, are subject to the provisions of the act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and by an act approved February 10, 1891; and also against the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, a corporation organized and existing under the laws of the State of Ohio; the Lake Shore and Michigan Southern Railway Company, a corporation organized and existing under the laws of the State of Ohio; and the New York Central and Hudson River Railroad Company, a corporation organized and existing under the laws of the State of New York, all three of which companies are common carriers and under a common control, management, or arrangement for continuous carriage or shipment between themselves, and with other connecting railroads are engaged in the transportation of property wholly by rail between Ivorydale, in Ohio, upon the line of the said the Cleveland, Cincinnati, Chicago and St. Louis Railway and Syracuse, Rochester, Albany, New York City, and other points in States other than Ohio, upon the lines of the said railroads and other connecting railroads, and as such carriers, in respect to said traffic, are subject to the act to regulate commerce and the amendments thereto; and also against the Baltimore and Ohio Southwestern Railroad Company, a corporation organized and existing under the laws of the State of Ohio, and the Baltimore and Ohio Railroad Company, a corporation organized and existing under the laws of the State of Maryland, both of which railroad companies are common carriers and under a common control, management, or arrangement for continuous carriage or shipment between themselves and with other connecting railroads, are engaged in the transportation of property wholly by rail betwen Ivorydale, in Ohio, and Washington, in the District of Columbia, and Baltimore, in the State of Maryland, and other points in States other than Ohio, upon the lines of the said railroads and other connecting railroads, and as such common carriers in respect to said traffic are subject to the act to regulate commerce and amendments thereto, and also severally against said Cincinnati, Hamilton and Dayton Railway Company, said Pitts-
11 burgh, Cincinnati, St. Louis and Chicago Railway Company, said Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and said Baltimore and Ohio Southwestern Railroad Company, which are also each severally engaged in the transportation of property wholly by rail between Ivorydale, in Ohio, and Chicago, in Illinois, and St. Louis, in Missouri, and singly or under a common control, management, or arrangement for continuous carriage or shipment, each with its connecting railroads, being common carriers to other points, respectively, in States other than Ohio, on the said lines of said several railroads and their connecting railroads, and as such common carriers, in respect to said traffic, are each subject to the act to regulate commerce and the amendments thereto.

II.

Your petitioner shows unto your honors the foregoing with reference to the parties to this proceeding and to their connections and business, and that complainant, since on or about July 1, 1890, has and does, in pursuance of the arrangement aforesaid between the Cincinnati, Hamilton and Dayton Railway Company, the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and the Pennsylvania Railroad Company, and with their connecting railroads, shipped or ship by said roads at divers times large quantities of their principal product, common soap, in carload lots and less than carload lots, from Ivorydale, in Ohio, to Harrisburg, Philadelphia, New York, and other points in States other than Ohio, on said railroads and their connecting railroads; and in pursuance of the arrangement aforesaid between the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Lake Shore and Michigan Southern Railway Company, and the New York Central and Hudson River Railroad Company, and with their connecting railroads, to Rochester, Albany, New York City, and other points in States other than Ohio, on said railroads and their connecting railroads; and in pursuance of the arrangement aforesaid between the Baltimore and Ohio Southwestern Railroad Company and the Baltimore and Ohio Railroad Company, and with their connecting railroads, to Washington, Baltimore, and other points in the District of Columbia, and in States other than Ohio, on said railroads and their connecting railroads; and in pursuance of the several undertakings of said Cincinnati, Hamilton and Dayton Railway Company, said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, said Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and said Baltimore and Ohio Southwestern Railroad Company, to Chicago, Ill., and St. Louis, Mo., and other points, respectively, in States other than Ohio, on said several railroads and their several connecting railroads; and complainant purposes and intends in good faith to continue said shipments.

12 III.

On or about December 15, 1899, the defendants, by joint action between themselves and with all the other railroads included in what is known as "Official Classification territory," being all that immense territory of the United States lying between Canada on the north, the Atlantic on the east, the James and Ohio rivers on the south, and the Mississippi River on the west, adopted a certain classification of articles and property for shipment over their lines, according to which, rates for charging and exacting payment for services rendered for transportation of property and merchandise and in connection therewith were fixed at a certain rate for each class of articles therein set forth. Said classification is known and designated as "Official Classification No. 20," and is upon the files of this Commission, and contains six general classes of articles numbered therein from 1 to 6. Upon said classes the defendants have and do fix and maintain decreasing rates in their numbered order.

The defendants, in common with the other railroads in the large territory covered by said Official Classification, have therein wrongly placed and maintained common soap in carload lots in said fifth class instead of said sixth class, where it properly and rightly belongs, and have therein wrongly placed and maintained common soap in less than carload lots in said third class instead of said fourth class, where it properly and of right belongs. Common soap in carload lots and the traffic therein possess, in a degree equal to any article in said sixth class and the traffic therein, a union of the qualities and conditions which do and of right should determine its class. Common soap in less than carload lots and the traffic therein possess, in a degree equal to any article in said fourth class and the traffic therein, a union of the qualities and conditions which do and of right should determine its class.

The difference in rate between said third and fifth classes is very much greater than between said fourth and sixth classes; and common soap in less than carload lots is and always has been in constant and sharp commercial competition with common soap in carload lots.

The defendants, nevertheless, have enforced said classification of common soap in carload lots in said fifth class, and of common soap in less than carload lots in said third class, and the rates consequent thereupon, in all of complainant's said shipments thereof upon their said lines and connecting lines, ever since on or about the 1st day of January, 1900, before which time, however, for many years, in similarly described classifications numbered 1 to 19 inclusive, they, together with all the other railroads in said Official Classification territory, gave common soap in carload lots a sixth-class place and rate, and in less than carload lots a fourth-class place and rate, and
13 have continued to, and do now, maintain said improper classification and rate, and consequently have charged, exacted and received, and do charge, exact and receive, payment from complainant for their said services at an unjust, unreasonable and unlawful rate, and have subjected and do thereby subject said traffic to an undue and unreasonable prejudice and disadvantage, and, furthermore, have subjected and do thereby subject said traffic in common soap in less than carload lots to an undue and unreasonable prejudice and disadvantage in its commercial competition with common soap in carload lots.

IV.

The said respondents, except the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and the Baltimore and Ohio Southwestern Railroad Company, were heretofore, to wit: On or about September 12, 1889, duly impleaded in a controversy before this Commission upon three several petitions of the firm of Procter & Gamble, at that time a partnership firm, alleging an exactly similar and recent wrongful classification of common soap in carload lots, as at large and more fully appears in and by said petitions on file in the office of this Commission. In addition to the foregoing there were impleaded in said controversy the Pittsburgh, Cincinnati

and St. Louis Railway Company, of which the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company has since become the successor by consolidation under the laws of the State of Ohio, and also Orland Smith and H. C. Yergason, receivers of the Cincinnati, Washington and Baltimore Railroad Company, of which receivers and of which railroad company the respondent, the Baltimore and Ohio Southwestern Railroad Company, has since become the successor by the purchase of the entire railroad and the property thereof. The respondent, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, was impleaded in said controversy, or another railway corporation of the same name, of which said respondent is the successor by consolidation under the laws of the State of Ohio.

On or about July 1, 1890, the complainant was organized as a corporation aforesaid, and succeeded by purchase to all the plant, business, and rights of the said firm of Procter & Gamble, and since said date has continued to operate and conduct and exercise the same, and now continues so to do, said firm having discontinued said business, being now dissolved, except for the purpose of winding up its affairs. Among other rights any and all rights resulting from the said proceedings instituted by said firm before said Commission thereupon inured to the benefit of your petitioner.

In pursuance of said petitions and of the proceedings pursuant thereto this Commission caused an order to issue against all
14 the said defendants before it that they do, "from and after the 1st day of September, 1890, wholly cease and desist from charging or receiving for the transportation and common or laundry soap in carload lots any greater rate per hundred pounds of the said soap and the package containing it than is contemporaneously charged or received by them for like services in the transportation of articles enumerated in class 6 of the classification of freight now in force over their respective lines." Said order is now of record in the office of this Commission.

From the 20th day of January, 1891, the day finally set, after denial of a petition for rehearing, for the taking effect of said order, the defendants then before the Commission and their successors, being the parties defendant in this petition, obeyed said order until the 1st day of January, 1900, when they began to disobey the same in the manner described in Section III of this petition.

Said disobedience was part and parcel of a joint arrangement between the defendants hereto and all the other railroads included in said Official Classification territory, then for the first time, on account of the vast and recent union or consolidation of their controlling interests, possible. By this arrangement a number of particular articles were changed from lower to higher classes for the sole purpose of increasing their revenues, to cover, as they pretend and allege, the increased cost of operation of their said railroads.

The alleged recent increase in cost of operation of the said railroads, if any, has been but an apparent increase over what it was during only a small part of the time during which classifications numbered 1 to 19 inclusive have been in force, while there was, on

account of the marked depression in the general business of the country, a corresponding and exceptional depression in prices and cost of articles and things required in the operation of railroads as well as all other kinds of business. It is not even an *apparent* increase over what it was during the greater part of the period covered by classifications numbered 1 to 19, while soap in less than carloads was carried at fourth-class and in carload lots at sixth-class rates.

So far, moreover, as there has been an apparent increase, the same has been more than offset by the very great general reduction in the actual and permanent cost of operation, due to changes and improvements in tracks, locomotives, roadbed, and equipment since 1887. On account of this, indeed, the rates on common soap should actually have been reduced instead of being now advanced. On the contrary, however, while the average cost and rate per ton per mile of all articles carried on said railroads have both been accordingly reduced, the rates on common soap have remained unjustly and unreasonably the same.

The action complained of was taken without conference with any of the shippers of the articles affected and without reference to or inquiry as to the qualities and conditions which do and should of right determine the class of any article; and said recent increase in cost of operation, if any, applies with the same force to the large number of articles in Official Classification No. 19 which were not changed in Official Classification No. 20 as to the comparatively small number of articles, including common soap in carload and less than carload lots, which have been changed as aforesaid.

In selecting said particular articles and increasing the rates upon them alone, by the device of changing them from a lower to a higher class, for the sole purpose of increasing revenues as aforesaid, instead of advancing their rates horizontally upon all the classes of Classification No. 19, or, instead of putting back to their former basis of 1887 rates and classifications temporarily reduced during said business depression, either of which courses, if said cost of operating *has* increased and justifies a higher transportation charge, would have been more equitable and would have netted the same, if not better general results, and would have caused much less or no increase of rate upon most of the particular articles aforesaid. By such course defendants have subjected and do thereby subject the said traffic in the articles changed, including common soap in carload and less than carload lots, to an undue and unreasonable prejudice and disadvantage with respect to the traffic in all of the articles whose classification was not changed in Official Classification No. 20.

If there are any qualities and conditions which, though not considered by defendants at the time of the adoption of said Classification No. 20, justify, nevertheless, the making of any or part of said changes, the same, at any rate, do not apply to common soap in carload or less than carload lots. The same should, at least, have remained in sixth class in carload lots, as ordered by this Commission as aforesaid, and in fourth class in less than carload lots, so as to maintain the proper relation and difference of rates between car-

load and less than carload lots. The changing of particular articles as aforesaid from lower to higher classes for the sole purpose of increasing the revenues of the railroads interested therein is not a condition or circumstance justifying the said change of classification in common soap.

V.

Complainant has prepaid and does prepay all its freight to all its customers and consignees both on carload and less than carload lots. The difference between what it would have had to pay as such freight if common soap in less than carload lots had been carried at fourth-class rates, and in carload lots at sixth-class rates, and what it has had to pay, under protest, nevertheless, to the defendants since January 1, 1900, amounts to more than the sum of $150 per working day, and will amount upon the day of hearing of this petition
16 to a sum obtained by multiplying that amount by the number of working days intervening between January 1, 1900, and the date of said hearing. The same has amounted for the month of January, 1900, to the sum of $3,602.20.

VI.

Wherefore your petitioner prays that the defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding the defendants to cease and desist from refusing to carry common soap in carload lots at sixth-class rates, and from refusing to carry common soap in less than carload lots at fourth-class rates, whatever they may be from time to time; and that an order be made commanding the defendants to make reparation to complainant by repaying it all such sums of money wrongfully exacted from it from January 1, 1900, to the date of the hearing of this petition, being the difference between sixth and fifth class rates on carload lots, and fourth and third class rates on less than carload lots, and for such other and further orders as may be necessary in the premises.

THE PROCTER & GAMBLE COMPANY,
By JOHN W. WARRINGTON AND
MORTIMER MATTHEWS, *Its Attorneys.*

STATE OF OHIO, *Hamilton County, set:*

W C. Procter, general manager of the Procter & Gamble Company, the complainant, having been first duly sworn, deposes and says that the allegations of its foregoing petition are true, as he verily believes.

W. C. PROCTER.

Sworn to before me and subscribed in my presence this 22d day of February, 1900.

J. D. MEEKER,
Notary Public in and for Hamilton County, Ohio.
[NOTARIAL SEAL.]

17 & 18 EXHIBIT B.

19 THE PROCTOR & GAMBLE COMPANY, Complainant,
v.
THE CINCINNATI AND DAYTON RAILWAY COMPANY ET AL.

The Joint and Several Answer of the Cincinnati, Hamilton and Dayton Railway Company, the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and the Pennsylvania Railroad Company.

1. These respondents admit that the petitioner is a corporation organized and engaged in business as alleged in the petition, and that in respect of its interstate shipments the respondents are subject to the provisions of the "Act to regulate commerce," and the amendments thereto.

2. They admit that these respondents, each acting for itself, have adopted the Official Classification No. 20.

They deny that common soap in carload lots is wrongfully placed therein in the fifth class, or that it properly and of right belongs in the sixth class; or that common soap in less than carload lots is wrongly placed therein in the third class, or that it properly and of right belongs to the fourth class; or that the effect of said classification is to charge, or that these respondents do charge, the petitioner an unreasonable or unlawful rate for the carriage of soap, either in carload lots or in less than carload lots, or that they subject said traffic to any undue or unreasonable prejudice, disadvantage, or discrimination.

They admit that for several years prior to the adoption of Official Classification No. 20, athough not for the period nor in all the official classifications alleged in the petition, common soap in carload lots was placed in the sixth class, and in less than carload lots in the fourth class.

Official Classification No. 20, as modified by Supplements No. 1 and No. 2, is the result of a general revision of former classifications made for the purpose of meeting an imperative demand for increased revenue, rendered necessary by recent increases in the cost of operating and maintaining respondents' railroads, and the respondents are prepared to show that said classification was adopted after careful consideration of all the conditions proper to be taken into account by a committee of great experience and skill, and that the transfer of common soap in carload lots from the sixth class to the fifth class, and in lots of less than carloads from the fourth class to the third class, in common with similar transfers of many other articles of commerce, was just and proper to meet changed conditions,
20 and that it is recognized by shippers generally, and, so far as the respondents are advised, by all shippers of common soap except the petitioners.

3. Neither the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, nor the Cincinnati, Hamilton and Dayton Railway

Company, which latter was incorporated in June, 1895, was a party to said proceeding of the firm of Procter & Gamble before this Commission in 1889; nor was the petitioner a party thereto. The respondents submit that the petitioner is not entitled to rely upon the order of the Commission made in said case as an adjudication of the matters set up in the present petition as against either of the respondents. They refer to the record of that proceeding and to the opinion of the Commission, and submit that the present conditions are dissimilar, and that the order of the Commission in that case was not intended to affect and can not lawfully affect the action of the respondents complained of in the present petition.

4. These respondents do not know whether the allegations contained in the fifth paragraph of the petition are true; they therefore deny the same, together with all other allegations of the petition not herein admitted.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY,
THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY,
By MAXWELL & RAMSEY, *Counsel.*

STATE OF OHIO, *Hamilton County, ss:*

A. H. McLeod, beisg first duly sworn, says that he is freight traffic manager of the Cincinnati, Hamilton and Dayton Railway Company, and that he believes the allegations of the foregoing answer to be true.

A. H. McLEOD.

Sworn to before me and subscribed in my presence this 14th day of March, A. D. 1900.

JOSEPH L. LACKNER,
Notary Public, Hamilton County, Ohio.

THE PROCTER & GAMBLE COMPANY, Complainant,
vs.
THE CINCINNATI, HAMILTON & DAYTON.

The complainant hereby acknowledges receipt of copy of the joint and several answers of the Cincinnati, Hamilton and Dayton Railway Company, the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and the Pennsylvania Railroad Company.

MORTIMER MATHEWS,
J. W. WARRINGTON,
Counsel for Complainant.

21 & 22 EXHIBIT C.

23 THE PROCTER & GAMBLE COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Complainant.

v.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PENNSYLVANIA RAILROAD COMPANY, a Corporation under the Laws of the Commonwealth of Pennsylvania; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, a Corporation under the Laws of the State of New York; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, a Corporation under the Laws of the State of Ohio, and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation under the Laws of the State of Maryland, Respondents.

Separate Answer of Respondent, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, one of the respondents herein, for its separate answer to the petition of the complainant, states:

(1.)

That it admits the corporate existence of the Procter & Gamble Company, petitioner herein, its location and character of business as alleged in paragraph 1 of its petition.

(2.)

Respondent admits that it is a corporation under the laws of the State of Ohio, and is now and has been for many years last past a railway company and common carrier engaged in the interstate transportation of property between Ivorydale and Cincinnati, Ohio, and points in the other States mentioned in said petition, and with respect to such interstate transportation it is subject to the provisions of the "Act to regulate commerce," approved February 4, 1887, and the amendments thereto, as stated in paragraph 2 of the petition herein.

24 (3.)

This respondent admits that in Official Cassification No. 20, which is generally applicable to the transportation of property between

points in the territory described by complainant, soap in packages was and is classified for the purpose of determining the rates of freight chargeable thereon, at third class in less than carload quantities, and fifth class in carload quantities.

It is also admitted that the respondent, as well as the numerous other railroad companies in the territory mentioned, each acting for itself, adopted the Official Classification No. 20, including the classifications therein provided for soap, as applicable to the carriage of property over their respective lines of railroad.

This respondent denies that prior to Jasuary 1, 1900, "in similarly described classifications numbered 1 to 19, inclusive," common soap was classified at fourth class in less than carload quantities and sixth class in carload quantities; but upon the contrary, in Official Classifications Nos. 1 to 8, in effect from April 1, 1887, to June 22, 1891, soap was continuously rated as follows: "Soap, fancy, castile and toilet, in boxes, second class in any quantity; soap, not otherwise specified, in boxes or barrels, fourth class in less than carload quantities, and fifth class in carload quantities;" also, that soap in carload quantities was classified in the fifth class under Official Classification No. 14 from January 1, 1895, to January 15, 1895.

(4.)

Referring to the allegation that on or about September 12, 1889, the firm of Procter & Gamble filed with the Interstate Commerce Commission a complaint against this respondent and some of its correspondents herein, as well as other railway companies, alleging "an exactly similar and recent wrongful classification of common soap in carload lots;" the respondent avers that the gravamen of that complaint was that the initial carriers had discontinued, which was in fact an improper and preferential practice which had prevailed only at Cincinnati and Ivorydale, Ohio, prior to the enactment of the interstate commerce law, of assessing charges upon complainants' shipments on the basis of the net weights of the soap, exclusive of the weights of the packages, and it was alleged that the transportation charges upon complainants' shipments were thereby increased substantially to the extent of the average difference between the fifth class and sixth class rates.

It is further averred that the principal other ground relied upon in said complaint was a simple comparison between soap and other articles then classified in the sixth class in carload quantities, notably apples in bulk, cider, coffee, fish, starch, and sugar; whereas all of said articles are at present included in the fifth class in carload quantities.

Respondent admits that the Interstate Commerce Commission then made an order to the effect that on and after September 1, 1890, the defendants named in the above proceeding—

"Shall cease and desist from charging or receiving for the transportation of common or laundry soap in carload lots any greater rate per hundred pounds of the said soap and the package containing it than is contemporaneously charged or received by them for like service in the transportation of articles enumerated in the sixth class

of the classification of freight now in force over their respective lines."

It is averred that on October 8, 1890, an application for a rehearing of the above-mentioned complaint was filed with the Commission on behalf of the defendants named, and numerous other railway companies using the official classification, and that in said application the following principal points, reasons, and evidence were submitted:

"(*a*) That the order of the Commission in behalf of the complainants substantially concluded railway companies not named in the complaint, who had not been afforded opportunity to intervene in the proceeding and whose interests had not been fully considered.

"(*b*) That no complaints against the then existing classification of soap in carloads had been made to the carriers or to the Commission by other soap manufacturers than the complainants.

"(*c*) That if the order of the Commission in favor of the complainants were enforced, compliance with the fourth section of the act to regulate commerce, as well as the equities of other soap manufacturers and the forces of competition, would necessitate corresponding and otherwise unnecessary reductions in rates upon all shipments of soap in carloads throughout "Official Classification territory."

"(*d*) That the practice of accepting complainants' shipments of soap at the net weights of the soap, exclusive of the weights of the packages, was not only contrary to the rules of the classifications then in force, but was done without the knowledge of railway companies other than the initial carriers at Cincinnati anl Ivorydale, Ohio.

"(*e*) Affidavits of various soap manufacturers and railway agents to the effect that actual gross weights of soap and packages had been charged upon shipments of soap at other points than Cincinnati and Ivorydale, Ohio.

"(*f*) That the finding of the Commission virtually gave cognizance, as bases for future rates, to preferential allowances which had existed prior to the enactment of the interstate commerce law and which that law had sought to correct.

"(*g*) That the comparison made between the classification of soap as then in effect under the 'Official, Southern, and Western Classification-' constituted no proper criterion for determining the
26 correctness or reasonableness of the rating of that article in either of said classifications, since the conditions surrounding the transportation of commodities in the territories in which such classifications were respectively in use were widely dissimilar and the rates chargeable under equal classes for like distances were variable and largely in favor of the Official Classification.

"(*h*) That the maximum difference between the fifth-class and sixth-class rates would amount only to an infinitesimal fraction of a cent per cake or bar of soap, and would therefore be of no benefit to the consumer of the article, but that under complainants' practice of prepaying transportation charges the aggregate of any such reduction in rates would accrue solely to them.

"(*i*) Reference being had to the findings of the Commission, wherein it was said: 'Whether the profit to the manufacturer would enable soap to bear a higher rate than the groceries in the sixth class does not appear.'

"A prospectus issued on behalf of the firm of Procter & Gamble on July 14, 1890, three days before the decision of the Commission was submitted, showing that the certified net profit from their sales for the year 1889 amounted to $586,000, being 21.3 per cent. of their total gross sales for that year, or 15 per cent. of the *appraised* valuation of their real estate, stock, plant, personal property, etc."

It is further averred that said application for rehearing was declined by the Commission *solely* upon the ground that the affidavits submitted showing that the practice of accepting shipments of soap at the net weights of the soap had not prevailed at other points than Cincinnati and Ivorydale, Ohio, were insufficient and inconclusive.

Respondent admits that on or about January 20, 1891, in compliance with a final order made by the Commission in the above proceeding, some of the defendants named in said complaint ceased to charge fifth-class rates upon complainants' shipments of common soap in carload quantities and thereafter charged sixth-class rates thereon, and that the other defendants were thereby substantially compelled to make or join in similar reduced rates.

It is further averred that in consequence of the reduced rates made by the defendants to said complaint, it became necessary for the various other railway companies using the Official Classification, for reasons set forth in the above-mentioned application for rehearing, to make corresponding reductions in rates upon shipments of soap in carload quantities forwarded by other soap manufacturers than the complainants, with the result that the classification of soap in carload quantities in the Official Classification was changed from fifth class to sixth class on June 22, 1891, thereby adding to the profits of the soap manufacturers to the extent of all of said reductions in rates, by reason of their general custom of preparing transportation charges.

27 Respondent is advised and believes that at no time since June 22, 1891, has the classification of soap in carload quantities in the sixth class been satisfactory to, or regarded as a proper or sufficiently remunerative rating for the service performed in the transportation of that article by, a large majority of the carriers using the Official Classification.

In this connection, respondent avers that at the time the classification of common laundry soap in carload quantities was reduced from fifth class to sixth class it was found necessary to discontinue the difference in classification theretofore in effect as between "fancy, castile, or toilet soap" at second class in any quantity, and "common or laundry soap" at fourth class in less than carload quantities, and establish in lieu thereof one uniform classification of "soap," regardless of character, kind, or quality, because of the impracticability of distinguishing between various kinds of soap, especially those advertised or described as suitable for both toilet and laundry soaps (the "ivory" soap of the complainants being so described), so that the

classification of the article thereafter included soaps of widely varying values. The necessity for this action was enforced by a decision rendered by the Commission on May 16, 1891, in the case of Beaver & Company *vs.* various railway companies, in which it was held that—

"Where two kinds of soap are made use of for the same puropses, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both, for purposes of transportation and rating, be placed in the same classification."

Respondent, in further and general answer to the petition of the complainant, avers as follows:

That changes in the ratings of various atricles were made in Official Classification No. 20 on January 1, 1900; that in response to requests interested railway companies gave a hearing in the city of New York on January 22 and 23, 1900, of which due public notice was given to all shippers, at which time opportunity was afforded for the full presentation of all objections to said charges in classification, among which were submitted the objections of the complainant to the revised classification of soap; that following such hearing due and careful consideration was given by the carriers to such objections of shippers, with the result that the various railway companies using the Official Classification have severally adopted certain modifications in the classification of articles advanced in the said Official Classification No. 20, and such modifications have been published by supplement, to take effect March 10, 1900; that in pursuance of said modifications and by provisions contained in said supplement, effective March 10, 1900, it is provided that soap in less than carload quantities is classified at third class, subject to a reduction of 20 per cent. (but not less than fourth class), and in carload quanti-
28 ties at fifth class. The effect of said change in classification will be to reduce the rates upon less than carload shipments to such an extent that the difference between the less-than-carload and carload rates chargeable under the revised classification will be substantially the same as, or less than, the difference between the less-than-carload rates at fourth class and the carload rates at sixth class which prevailed prior to January 1, 1900.

Respondent further avers that the conditions affecting the classification and transportation of soap at the present time are dissimilar from those which obtained at the time of the complaint of the firm of Proctor & Gamble, hereinbefore mentioned, and upon which the decision of the commission in said proceeding was based; that the classification of soap which became effective on March 10, 1890, established reasonable and relative rates for the service to be performed in the transportation of said article; that said revised classification will not subject complainant or the traffic in soap to any undue or unreasonable prejudice or disadvantage, and will not be in violation of any of the provisions of the act to regulate commerce, as amended; and respondent has reason to believe that the said new classification of soap will prove generally satisfactory or acceptable to other soap manufacturers than the complainant.

This respondent avers that there are many other manufacturers and shippers of soap in the territory where complainants manufa-

ture and ship their products covered by this classification; but respondent is not advised of any complaint or remonstrance by any manufacturers or shippers of soap on account of said classification other than by this complainant, and that the said classification for soap is fair and equitable as compared with the classification of other like products.

This respondent denies each and every allegation contained in complainants' petition not herein expressly admitted to be true.

Wherefore respondent prays that the petition be dismissed.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
By JNO. T. DYE,
S. O. BAYLESS, *Its Attorneys.*

STATE OF OHIO, *Hamilton County, ss:*

E. F. Cost, freight traffic manager of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, respondent, having been first duly sworn, deposes and says that the allegations of its foregoing answer are true, as he verily believes. E. F. COST.

Sworn to before me and subscribed in my presence this 8th day of March, 1900.

N. T. COX,
Notary Public in and for Hamilton County, Ohio.

29 & 30 EXHIBIT D.

31 THE PROCTER & GAMBLE COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Complainant.

v.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY, a Corporation under the Laws of the State of Ohio; THE PENNSYLVANIA RAILROAD COMPANY, a Corporation under the Laws of the Commonwealth of Pennsylvania; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, a Corporation under the Laws of the State of New York; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, a Corporation under the Laws of the State of Ohio, and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation under the Laws of the State of Maryland, Respondents.

Separate Answer of Respondent The Lake Shore and Michigan Southern Railway Company.

The Lake Shore and Michigan Southern Railway Company, one of the respondents herein, for its separate answer to the petition of the complainant, states:

(1.)

That it admits the corporate existence of the Proctor & Gamble Company, petitioner herein, its location and character of business as alleged in paragraph one of its petition.

(2.)

Respondent admits that it is a corporation under the laws of the State of Ohio and is now, and has been for many years last past, a railway company and common carrier engaged in the interstate transportation of property, including freight delivered to it by connecting carriers for points on and beyond its lines, and carries
32 the products of the complainant when so delivered to it by such connecting carriers and under the classification and rates effective at the time, and with respect to such interstate transportation it is subject to the provisions of the "Act to regulate commerce," approved February 4, 1887, and the amendments thereto as stated in paragraph 2 of the petition herein.

(3.)

This respondent admits that in "Official Classification No. 20," which is generally applicable to the transportation of property between points in the territory described by complainant, soap in packages was and is classified for the purpose of determining the rates of freight chargeable thereon, at third class in less than carload quantities and fifth class in carload quantities.

It is also admitted that the respondent, as well as the numerous other railroad companies in the territory mentioned, each acting for itself, adopted the Official Classification No. 20, including the classification therein provided for soap, as applicable to the carriage of property over their respective lines of railroad.

This respondent denies that prior to January 1, 1900, "in similarly described classifications numbered 1 to 19, inclusive," common soap was classified as fourth class in less than carload quantities and sixth class in carload quantities; but upon the contrary, in Official Classification Nos. 1 to 8, in effect from April 1, 1887, to June 22, 1891, soap was continuously rated as follows: "Soap, fancy, castile, and toilet, in boxes, second class in any quantity; soap, not otherwise specified, in boxes or barrels, fourth class in less than carload quantities, and fifth class in carload quantities; also that soap in carload quantities was classified in the fifth class under Official Classification No. 14 from January 1, 1895, to January 15, 1895."

(4.)

Referring to the allegation that on or about September 12, 1889, the firm of Proctor & Gamble filed with the Interstate Commerce Commission a complaint against this respondent and some of its co-respondents herein, as well as other railway companies, alleging "an exactly similar and recent wrongful classification of common soap in carload lots," the respondent avers that the gravamen of that com-

plaint was that the initial carriers had discontinued, which was in fact an improper and preferential practice which had prevailed only at Cincinnati and Ivorydale, Ohio, prior to the enactment of the interstate-commerce law, of assessing charges upon complainant's shipments on the basis of the net weights of the soap, exclusive of the weights of the packages; and it was alleged that the transportation charges upon complainant's shipments were thereby increased
33 substantially to the extent of the average difference between the fifth-class and sixth-class rates.

It is further averred that the principal other ground relied upon in said complaint was a simple comparison between soap and other articles then classified in the sixth class in carload quantities, notably apples in bulk, cider, coffee, fish, starch, and sugar, whereas all of said articles are at present included in the fifth class in carload quantities.

Respondent admits that the Interstate Commerce Commission then made an order to the effect that on and after September 1, 1890, the defendants named in the above proceedings—

"Shall cease and desist from charging or receiving for the transportation of common laundry soap in carload lots any greater rate per hundred pounds of the said soap and the package containing it than is contemporaneously charged or received by them for like service in the transportation of articles enumerated in the sixth class of the classification of freight now in force over their respective lines."

It is averred that on October 8, 1890, an application for a rehearing of the above-mentioned complaint was filed with the Commission on behalf of the defendants named and numerous other railway companies using the Official Classification, and that in said application the following principal points, reasons, and evidence were submitted:

"(*a*) That the order of the Commission in behalf of the complainants substantially included railway companies not named in the complaint, who had not been afforded opportunity to intervene in the proceeding and whose interests had not been fully considered.

"(*b*) That no complaint against the then existing classification of soap in carloads had been made to the carriers or to the Commission by other soap manufactures than the complainants.

"(*c*) That if the order of the Commission in favor of the complainants were enforced, compliance with the fourth section of the act to regulate commerce, as well as the equities of other soap manufacturers and the forces of competition, would necessitate corresponding and otherwise unnecessary reductions in rates upon all shipments of soap in carloads throughout 'official classification territory.'

"(*d*) That the practice of accepting complainant's shipment of soap at the net weights of the soap, exclusive of the weights of the packages, was not only contrary to the rules of the classifications then in force, but was done without the knowledge of railway companies other than the initial carriers at Cincinnati and Ivorydale, Ohio.

"(*e*) Affidavits of various soap manufacturers and railway agents to the effect that actual gross weights of soap and packages had been charged upon shipments of soap at other points than Cincinnati and Ivorydale, Ohio.

34 "(*f*) That the finding of the Commission virtually gave cognizance, as bases for future rates, to preferential allowances which had existed prior to the enactment of the interstate-commerce law and which that law had sought to correct.

"(*g*) That the comparison made between the classification of soap as then in effect under the 'Official, Southern and Western Classification' constituted no proper criterion for determining the correctness or reasonableness of the rating of that article in either of said classifications, since the conditions surrounding the transportation of commodities in the territories in which such classifications were respectively in use were widely dissimilar, and the rates chargeable under equal classes for like distances were variable and largely in favor of the Official Classification.

"(*h*) That the maximum difference between the fifth-class and sixth-class rates would amount only to an infinitesimal fraction of a cent per cake or bar of soap, and would therefore be no benefit to the consumer of the article, but that under the complainant's practice of prepaying transportation charges the aggregate of any such reduction in rates would accrue solely to them.

"(*i*) Reference being had to the findings of the Commission, wherein it was said, 'Whether the profit to the manufacturer would enable soap to bear a higher rate than the groceries in the sixth class does not appear.'

"A prospectus issued on behalf of the firm of Proctor & Gamble on July 14, 1890 (three days before the decision), was submitted, showing that the certified net profit from their sales for the year 1889 amounted to $586,000, being 21.3 per cent. of their total gross sales for that year, or 15 per cent. of the *appraised* valuation of their real estate, stock, plant, personal property, etc."

It is further averred that said application for rehearing was declined by the Commission *solely* upon the ground that the affidavits submitted, showing that the practice of accepting shipments of soap at the net weight of the soap *had not prevailed at other points than Cincinnati and Ivorydale*, Ohio, were insufficient and inconclusive.

Respondent admits that on or about January 20, 1891, in compliance with a final order made by the Commission in the above proceeding, some of the defendants named in said complaint ceased to charge fifth-class rates upon complainant's shipments of common soap in carload quantities and thereafter charged sixth-class rates thereon, and that the other defendants were thereby substantially compelled to make or join in similar reduced rates.

It is further averred that in consequence of the reduced rates made by the defendants to said complaint it became necessary for the various other railway companies using the Official Classification,

35 for reasons set forth in the above-mentioned application for rehearing, to make corresponding reductions in rates upon shipments of soap in carload quantities forwarded by other soap manufacturers than the complainant, with the result that the classification of soap in carload quantities in the Official Classification was changed from fifth class to sixth class on June 22, 1891, thereby adding to the profits of the soap manufacturers to the extent of all of

said reductions in rates by reason of their general custom of prepaying transportation charges.

Respondent is advised and believes that at no time since June 22, 1891, has the classification of soap in carload quantities in the sixth class been satisfactory to, or regarded as a proper or sufficiently remunerative rating for the service performed in the transportation of that article by, a large majority of the carriers using the official classification.

In this connection respondent avers that at the time the classification of common laundry soap in carload quantities was reduced from fifth class to sixth class it was found necessary to discontinue the difference in classification theretofore in effect as between "fancy castile or toilet soap" at second class in any quantity and "common or laundry soap" at fourth class in less than carload quantities and establish in lieu thereof one uniform classification of "soap," regardless of character, kind, or quality, because of the impracticability of distinguishing between various kinds of soap, especially those advertised or described as suitable for both toilet and laundry soaps (the "Ivory" soap of the complainant being so described), so that the classification of the article thereafter included soaps of widely varying values. The necessity for this action was enforced by a decision rendered by the Commission on May 16, 1891, in the case of Beaver & Co. *v.* various railway companies, in which it was held that—

"Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both, for purposes of transportation and rating, be placed in the same classification."

Respondent, in further and general answer to the petition of the complainant, avers as follows:

That changes in the ratings of various articles were made in Official Classification No. 20 on January 1, 1900; that, in response to requests, interested railway companies gave a hearing in the city of New York on January 22 and 23, 1900, of which due public notice was given to all shippers, at which time opportunity was afforded for the full presentation of all objections to said changes in classification, among which were submitted the objections of the complainant to the revised classification of soap; that, following such hearing, due and careful consideration was given by the carriers to such
36 objections of shippers, with the result that the various railway companies using the Official Classification have severally adopted certain modifications in the classification of articles advanced in the said Official Classfication No. 20, and such modifications have been published, by supplement, to take effect March 10, 1900; that in pursuance of said modifications and by the provisions contained in said supplement, effective March 10, 1900, it is provided that soap in less than carload quantities is classified at third class, subject to a reduction of 20 per cent. (but not less than fourth class), and in carload quantities at fifth class. The effect of said change in classification will be to reduce the rates upon less than carload shipments to such extent that the difference between the less than carload and car-

load rates chargeable under the revised classification will be substantially the same as or less than the difference between the less than carload rates at fourth class and the carload rates at sixth class which prevailed prior to January 1, 1900.

Respondent further avers that the conditions affecting the classification and transportation of soap at the present time are dissimilar from those which obtained at the time of the complaint of the firm of Procter & Gamble, heretofore mentioned, and upon which the decision of the Commission in said proceeding was based; that the classification of soap which became effective on March 10, 1900, establishes reasonable and relative rates for the service to be performed in the transportation of said article; that said revised classification will not subject complainant or the traffic in soap to any undue or unreasonable prejudice or disadvantage and will not be in violation of any of the provisions of the act to regulate commerce, as amended; and respondent has reason to believe that the said new classification of soap will prove generally satisfactory or acceptable to other soap manufacturers than the complainant.

This respondent avers that there are many other manufacturers and shippers of soap in the territory where complainants manufacture and ship their products covered by this classification, but respondent is not advised of any complaint or remonstrance by any manufacturers or shippers of soap on account of said classification other than by this complainant, and that the said classification for soap is fair and equitable as compared with the classification of other like products.

Respondent is advised and believes that any reduction which might be made in the classification of soap in carload quantities would inure most largely to the benefit and advantage of the complainants, and would operate to the detriment of other soap manufacturers, by reason of the character and magnitude of complainant's business and the maintenance by them of distributing depots or agencies in the principal cities of various States to which complainant's shipments of soap are forwarded in carload quantities, and thence dis-
37 & 38 tributed in lesser quantities to small purchasers, and that such methods are practically unavailable to a majority of other soap manufacturers.

This respondent denies each and every allegation contained in complainant's petition not herein expressly admitted by it to be true.

Wherefore respondent prays that the petition be dismissed.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY,
By G. J. GRAMMER,
General Traffic Manager.
GEO. C. GREENE,
General Counsel, Cleveland, Ohio.

STATE OF OHIO, *Cuyahoga County, ss:*

G. J. Grammer being duly sworn, says that he is the general traffic manager of the defendant above answering, the Lake Shore and Michigan Southern Railway Company, a corporation, and that the

statements contained in the above answer are true, as he verily believes.

G. J. GRAMMER.

Signed and sworn to before me, by G. J. Grammer, this 13th day of March, 1900.

CARL R. APTHORP,
Notary Public.

39 & 40 EXHIBIT E.

41 THE PROCTER & GAMBLE COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Complainant,

v.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PENNSYLVANIA RAILROAD COMPANY, a Corporation under the Laws of the Commonwealth of Pennsylvania; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, a Corporation under the Laws of the State of New York; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, a Corporation under the Laws of the State of Ohio, and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation under the Laws of the State of Maryland, Respondents.

Separate Answer of Respondent The New York Central and Hudson River Railroad Company.

The New York Central and Hudson River Railroad Company, one of the respondents herein, for its separate answer to the petition of the complainant, states:

(1.)

That it admits the corporate existence of The Procter & Gamble Company, petitioner herein, its location and character of business as alleged in paragraph 1 of its petition.

(2.)

Respondent admits that it is a corporation under the laws of the State of New York, and is now, and has been for many years last past, a railway company and common carrier engaged in the interstate transportation of property, including freight delivered to it by connecting carriers for points on and beyond its lines, and carries the products of the complainant when so delivered to it by such connect-

ing carriers and under the classification and rates effective at
42 the time, and with respect to such interstate transportation it is subject to the provisions of the "Act to regulate commerce," approved February 4, 1887, and the amendments thereto, as stated in paragraph 2 of the petition herein.

(3.)

This respondent admits that in "Official Classification No. 20," which is generally applicable to the transportation of property between points in the territory described by complainant, soap in packages was and is classified, for the purpose of determining the rates of freight chargeable thereon, at third class in less than carload quantities and fifth class in carload quantities.

It is also admitted that the respondent, as well as the numerous other railroad companies in the territory mentioned, each acting for itself, adopted the Official Classification No. 20, including the classification therein provided for soap, as applicable to the carriage of property over their respective lines of railroad.

This respondent denies that prior to January 1, 1900, "in similarly described classifications, numbered 1 to 19 inclusive," common soap was classified at fourth class in less than carload quantities and sixth class in carload quantities; but, on the contrary, in Official Classification Nos. 1 to 8, in effect from April 1, 1887, to June 22, 1891, soap was continuously rated as follows: "Soap, fancy, castile and toilet, in boxes, second class in any quantity; soap not otherwise specified, in boxes or barrels, fourth class in less than carload and fifth class in carloads;" also, that soap in carload quantities was also classified in the fifth class under Official Classification No. 14 from January 1, 1895, to January 15, 1895.

(4.)

Referring to the allegation that on or about September 12, 1889, the firm of Procter & Gamble filed with the Interstate Commerce Commission a complaint against this respondent and some of its corespondents herein, as well as other railway companies, alleging "an exactly similar and recent wrongful classification of common soap in carload lots," the respondent avers that the gravamen of that complaint was that the initial carriers had discontinued, which was in fact an improper and preferential practice, which had prevailed only at Cincinnati and Ivorydale, Ohio, prior to the enactment of the interstate-commerce law, of assessing charges upon complainants' shipments on the basis that the net weights of the soap, exclusive of the weights of the packages, and it was alleged that the transportation charges upon complainants' shipments were thereby increased substantially to the extent of the average difference between the fifth class and sixth class rates.

43 It is further averred that their principal other ground relied upon in said complaint was a simple comparison between soap and other articles then classified in the sixth class in carload quanti-

ties, notably apples in bulk, cidar, coffee, fish, starch, and sugar; whereas all of said articles are at present included in the fifth class in carload quantities.

Respondent admits that the Interstate Commerce Commission then made an order to the effect that on and after September 1, 1890, the defendants named in the above proceeding—

"Shall cease and desist from charging or receiving for the transportation of common laundry soap in carload lots any greater rate per hundred pounds of the said soap and the package containing it than is contemporaneously charged or received by them for like service in the transportation of articles enumerated in the sixth class of the classification of freight now in force over their respective lines."

It is averred that on October 8, 1890, an application for a rehearing of the above-mentioned complaint was filed with the Commission on behalf of the defendants named and numerous other railway companies using the Official Classification, and that in said application the following principal points, reasons, and evidence were submitted:

"(*a*) That the order of the Commission in behalf of the complainants substantially included railway companies not named in the complaint, who had not been afforded opportunity to intervene in the proceeding and whose interests had not been fully considered.

"(*b*) That no complaints against the then existing classification of soap in carloads had been made to the carriers or to the Commission by other soap manufacturers than the complainants.

"(*c*) That if the order of the Commission in favor of the complainants were enforced, compliance with the fourth section of the act to regulate commerce, as well as the equities of other soap manufacturers and the forces of competition, would necessitate corresponding and otherwise unnecessary reductions in rates upon all shipments of soap in carloads throughout 'Official Classification territory.'

"(*d*) That the practice of accepting complainants' shipment of soap at the net weights of the soap, exclusive of the weights of the packages, was not only contrary to the rules of the classification then in force, but was done without the knowledge of railway companies other than the initial carriers at Cincinnati and Ivorydale, Ohio.

"(*e*) Affidavits of various soap manufacturers and railway agents to the effect that actual gross weights of soap and packages had been charged upon shipments of soap at other points than Cincinnati and Ivorydale, Ohio.

"(*f*) That the finding of the Commission virtually gave cognizance, as bases for future rates, to preferential allowances
44 which had existed prior to the enactment of the interstate-commerce law, and which that law had sought to correct.

"(*g*) That the comparison made between the classification of soap as then in effect under the 'Official, Southern and Western Classification' constituted no proper criterion for determining the correctness or reasonableness of the rating of that article in either of said classifications, since the conditions surrounding the transportation of commodities in the territories in which such classifications were respectively in use were widely dissimilar and the rates chargeable under

equal classes for like distances were variable and largely in favor of the Official Classification.

"(*h*) That the maximum difference between the fifth class and sixth class rates would amount only to an infinitesimal fraction of a cent per cake or bar of soap and would therefore be of no benefit to the consumer of the article, but that under complainants' practice of prepaying transportation charges, the aggregate of any such reduction in rates would accrue solely to them.

"(*i*) Reference being had to the findings of the Commission, wherein it was said:

" 'Whether the profit to the manufacturer would enable soap to bear a higher rate than the groceries in the sixth class does not appear.'

"A prospectus issued on behalf of the firm of Procter & Gamble on July 14, 1890, three days before the decision of the Commission, was submitted, showing that the certified net profit from their sales for the year 1889 amounted to $586,000, being 21.3 per cent. of their total gross sales for that year, or 15 per cent. of the *appraised* valuation of their real estate, stock, plant, personal property, etc."

It is further averred that said application for rehearing was declined by the Commission *solely* upon the ground that the affidavits submitted showing that the practice of accepting shipments of soap at the net weights of the soap *had not prevailed at other points than Cincinnati and Ivorydale, Ohio,* were insufficient and inconclusive.

Respondent admits that on or about January 20, 1891, in compliance with a final order made by the Commission in the above proceedings, some of the defendants named in said complaint ceased to charge fifth class rates upon complainants' shipments of common soap in carload quantities and thereafter charged sixth-class rates thereon, and that the other defendants were thereby substantially compelled to make or join in similar reduced rates.

It is further averred that in consequence of the reduced rates made by the defendants to said complainant it became necessary for the various other railway companies using the Official Classification, for reasons set forth in the above-mentioned application for rehearing, to make corresponding reductions in rates upon shipments of soap in carload quantities forwarded by other soap manufacturers than the complainants, with the result that the classification of soap in carload quantities in the Official Classification was changed from fifth class to sixth class on June 22, 1891, thereby adding to the profits of the soap manufacturers to the extent of all of said reductions in rates by reason of their general custom of prepaying transportation charges.

Respondent is advised and believes that at no time since June 22, 1891, has the classification of soap in carload quantities in the sixth class been satisfactory to or regarded as a proper or sufficiently remunerative rating for the service performed in the transportation of that article by a large majority of the carriers using the Official Classification.

In this connection respondent avers that at the time the classification of common laundry soap in carload quantities was reduced from

fth class to sixth class, it was found necessary to discontinue the difference in classification theretofore in effect as between "fancy, castile, r toilet soap" at second class in any quantity and "common or aundry soap" at fourth class in less than carload quantities, and stablish in lieu thereof one uniform classification of "soap," regardess of character, kind, or quality, because of the impracticability of istinguishing between various kinds of soap, especially those adversed or described as suitable for both toilet and laundry soaps (the vory soap of the complainant being so described), so that the classication of the article thereafter included soaps of widely varying alues. The necessity for this action was enforced by a decision rendered by the Commission on May 16, 1891, in the case of Beaver *v.* arious railway companies, in which it was held that, "where two inds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are ubstantially equal in value, they should both for the purposes of ransportation and rating be placed in the same classification."

Respondent, in further and general answer to the petition of the omplainant, avers as follows:

That changes in the ratings of various articles were made in Official lassification No. 20 on January 1, 1900; that in response to requests, interested railway companies gave a hearing in the city of New York on January 22 and 23, 1900, of which due public notice as given to all shippers, at which time opportunity was afforded for he full presentation of all objections to said changes in classification, among which were submitted the objections of the complainants to he revised classification of soap; that following such hearing due and careful consideration was given by the carriers to such objections of shippers, with the result that the various railway companies 46 using the Official Classification have severally adopted certain modifications in the classification of articles advanced in the said Official Classification No. 20, and such modifications have been published by supplement to take effect March 10, 1900; that in pursuance of said modifications and by provisions contained in said supplement, effective March 10, 1900, it is provided that soap in less than carload quantities is classified at third class, subject to a reduction of 20 per cent. (but not less than fourth class), and in carload quantities at fifth class. The effect of said change in classification will be to reduce the rates upon less than carload shipments to such an extent that the difference between the less than carload and carload rates chargeable under the revised classification will be substantially the same as or less than the difference between the less than carload rates at fourth class and the carload rates at sixth class which prevailed prior to January 1, 1900.

Respondent further avers that the conditions affecting the classification and transportation of soap at the present time are dissimilar from those which obtained at the time of the complaint of the firm of Procter & Gamble hereinbefore mentioned and upon which the decision of the Commission in said proceeding was based; that the classification of soap which became effective on March 10, 1900, establishes reasonable and relative rates for the service to be performed

in the transportation of said article; that said revised classification will not subject complainant or the traffic in soap to any undue or unreasonable prejudice or disadvantage, and will not be in violation of any of the provisions of the act to regulate commerce, as amended, and respondent has reason to believe that the said new classification of soap will prove generally satisfactory and acceptable to other soap manufacturers than the complainant.

This respondent avers that there are many other manufacturers and shippers of soap in the territory where complainants manufacture and ship their products covered by this classification; but respondent is not advised of any complaint or remonstrance by any manufacturers or shippers of soap on account of said classification other than by this complainant, and that the said classification for soap is fair and equitable as compared with the classification of other like products.

Respondent is advised and believes that any reduction which might be made in the classification of soap in carload quantities would inure most largely to the benefit and advantage of the complainants, and would operate to the detriment of other soap manufacturers by reason of the character and magnitude of complainants' business and the maintenance by them of distributing depots or agencies in the principal cities of various States, to which complainants' shipments of soap are forwarded in carload quantities and thence distributed in lesser quantities to small purchasers, and that such methods are practically unavailable to a majority of other soap manufacturers.

47 & 48 This respondent denies each and every allegation contained in complainants' petition not herein expressly admitted by it to be true.

Wherefore respondent prays that the petition be dismissed.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By SAMUEL E. WILLIAMSON,
S. O. BAYLESS,
Its Attorneys.

STATE OF NEW YORK, *County of New York, ss:*

Nathan Guilford, being first duly sworn, says that he is the traffic manager of the New York Central and Hudson River Railroad Company; that the statements contained in the foregoing answer are true as he verily believes.

NATHAN GUILFORD.

Sworn to before me this 14th day of March, 1900.

LEE BESBY,
Notary Public, New York County.

49 & 50 EXHIBIT F.

51 THE PROCTER & GAMBLE COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Complainant,

vs.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY, a Corporation under the Laws of the State of Ohio; THE PENNSYLVANIA RAILROAD COMPANY, a Corporation under the Laws of the Commonwealth of Pennsylvania; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, a Corporation under the Laws of the State of Ohio; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, a Corporation under the Laws of the State of New York; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, a Corporation under the Laws of the State of Ohio, and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation under the Laws of the State of Maryland, Respondents.

The Separate Answer of the Baltimore and Ohio Southwestern Railroad Company, one of the Respondents, to the Petition of the Procter & Gamble Company, Complainants.

I.

This respondent, the Baltimore and Ohio Southwestern Railroad Company, impleaded with others, saving and reserving unto itself all and all manner of objection and exception to the said petition on account of its manifold uncertainties, insufficiences, etc., for answer thereto, or so much thereof as it is advised is material and necessary to be answered unto, says: That this respondent denies each and every material allegation in said petition contained, necessary to relief, and expressly denies each and every allegation, argument, intimation, innuendo, suggestion, or pretense, contained in said petition, by which it is sought to be alleged, pretended, or charged, that this respondent acting independently or jointly with others, has, contrary to law, imposed, collected, or received, or intends to impose, collect, or receive, any wrongful or unreasonable rate, tariff, or charge for the transportation of common soap in carload lots, or for the transportation of common soap in less than carload lots; and this respondent expressly denies that it, acting independently or
52 jointly with others, has wrongfully or improperly by any means, directly or indirectly, been guilty of unjust discrimination against the complainant; and this respondent says that as to any and all other matters in said petition contained, other than as specifically that it has collected, charged, or received or intends to collect, charge, or receive an unreasonable rate, tariff, or charge

for the transportation of freight, or that it is or has been guilty of a wrongful and unjust discrimination against the complainant, both of which charges have been and are hereby specifically denied, the said Interstate Commerce Commission are without jurisdiction or authority in law, and that as to all such other matters the said Procter & Gamble Company, complainant, alleged to be a corporation, are mere intermeddlers, seeking to control the legitimate business and capital of others invested in a much less lucrative field than the manufacture and sale of common soap, of which last-named business complainant practically enjoys a monopoly.

II.

This respondent further answering says that it is a corporation organized by consolidation in the States of Ohio and Indiana, and that it is a common carrier engaged in the interstate transportation of property between Ivorydale and Cincinnati, Ohio, and points in the States of Ohio, Indiana, and elsewhere, and that with respect to such interstate transportation it is subject to the provisions of the act to regulate commerce, approved February 4, 1887, as amended. This respondent further answering says that the Baltimore and Ohio Southwestern Railroad Company was organized in the year 1899 by consolidation of the Cincinnati, Portsmouth and Parkersburg Railway Company, a corporation organized in the State of Ohio in July, 1899, and the Cincinnati, Louisville and Vincennes Railway Company, a corporation organized in the State of Indiana in July, 1899, and that said Baltimore and Ohio Southwestern Railroad Company was formed, pursuant to law, by the consolidation of the said companies, under the laws of the States of Ohio and Indiana.

This respondent further answering says that it derived title to the railroad property known as the Baltimore and Ohio Southwestern Railway from a foreclosure sale in the circuit court of the United States for the southern district of Ohio, western division, in a certain cause pending in that court, wherein the Farmers' Loan and Trust Company and W. H. H. Miller were complainants, and the Baltimore and Ohio Southwestern Railway Company *et al.* were defendants, through mesne conveyances from a sale by B. R. Cowen, special master commissioner, pursuant to decree of foreclosure and sale on the 10th day of July, A. D. 1899, and this respondent in fact says that it took said railway property free, clear, and discharged of all judgments, liens, or incumbrances other than such as were
53 imposed upon said property by the terms of the decree of sale in the said foreclosure proceeding; and this respondent further answering says that by the terms of said decree of foreclosure no burden was imposed upon this respondent for or on account of any matter or thing alleged in the petition of the said Procter & Gamble Company, or for or on account of any judgment, decree, entry or order theretofore made in any cause to which any persons formerly interested in said property may have been parties, except in so far as the same ran with the land and were in law a charge upon the real estate or tangible property actually transferred, conveyed, and acquired by this respondent in the purchase of said property; and this respondent further answering says that from and since

the 1st day of August, A. D. 1899, this respondent has been operating its own line of railroad from the city of East St. Louis, in the State of Illinois, to the city of Marietta, in the State of Ohio, and from the city of Beardstown, in the State of Illinois, to the city of Shawneetown, in the State of Illinois, and from the city of North Vernon, in the State of Indiana, to the city of New Albany, in the State of Indiana, with certain short branches, sidetracks, connections, and so forth, the whole constituting the property of this railroad company, and that the complainant has no right, title, or interest whatever in and to said property or any part thereof, nor has the said complainant any rights under and by virtue of any decree, judgment, order, or entry in and to said property, for or on any account whatsoever.

III.

This respondent admits that in the conduct of its business it became and was necessary for this respondent, in order to facilitate the business of the transportation of freight for the general public, and especially with reference to the necessity of making connections and delivering freight to other railroad companies destined for points not on the line of this respondent, to fix, make, promulgate, and publish a classification of freights in order that it might be generally known among railroads upon what terms or upon what basis this respondent would accept and transport freight over its line of railway to or from points on its line received from or destined for points on the lines of connecting carriers likewise engaged in the transportation of freight. And this respondent admits that in Official Classification No. 20, effective January 1, 1900, which is generally applicable upon the transportation of property between points in the territory described by complainant, for and by reason of the absolute necessity for some common basis upon which to transact such business among connecting carriers, "soap, in packages," was and is classified, for the purpose of determining the rates of freight chargeable thereon, at third class in less than carload quantities and fifth class in carload quantities.

54 This respondent further admits that numerous railway companies, each acting for itself, adopted the said Official Classification No. 20, including the classification therein provided for soap, as applicable to the carriage of property over their respective lines of railroad. And this respondent avers that it had the right to adopt such classification and to enforce the same in the conduct of its business, and to be governed by said classification in the transportation of soap for complainant in the absence of the fixing of an unreasonable rate or charge for such transportation and in the absence of any wrongful or improper or unjust discrimination against complainant, neither of which offenses is or can be charged or maintained as against this respondent. This respondent further answering denies the allegation of complainant in its petition that "prior to January 1, 1900, in similarly described classifications numbered 1 to 19, inclusive," common soap was classified at fourth class in less than carload quantities and sixth class in carload quantities, but, on the contrary, this respondent alleges, as it is advised, that

long prior to January 1, 1900, other and different classifications had been adopted by railroads doing business in the territory described by complainant, and that in Official Classification Nos. 1 to 8, in effect from April 1, 1887, to June 22, 1891, soap was continuously rated as follows: "Soap, fancy, castile and toilet, in boxes, second class in any quantity; soap, not otherwise specified, in boxes or barrels, fourth class in less than carload quantities, and fifth class in carload quantities;" also, that soap in carload quantities was classified in the fifth class under Official Classification No. 14 from January 1, 1895, to January 15, 1895. This respondent avers that such classifications were prior to the time it was engaged in business, and that it had no part in fixing such prior classifications, as it was not then engaged in the business of transportation of freight, but such fact is alleged and set forth upon information in denial of the petition in that regard.

IV.

This respondent, further answering, with respect to the allegation in said petition contained, that on or about September 12, 1889, the firm of Procter & Gamble filed with the Interstate Commerce Commission a complaint against certain of the respondents named in the present petition of the Procter & Gamble Company, as well as other railway companies, in alleging "an exactly similar and recent wrongful classification of common soap in carload lots," says that such allegation is false; that in truth and in fact respondent shows that the gravamen of the complaint of Procter & Gamble, at the time, as this respondent is advised, was that the initial carriers had discontinued an improper and preferential practice which had previously prevailed at Cincinnati and Ivorydale, Ohio, only, which prac-
55 tice began prior to the enactment of the interstate commerce law, by which the charges upon the shipments of the firm of Procter & Gamble were assessed on the basis of the net weights of the soap exclusive of the weights of the packages, and it was alleged, as this respondent is advised, that the transportation charges upon shipments of Procter & Gamble were thereby increased substantially to the extent of the average difference between the sixth-class and fifth-class rates.

This respondent is further advised, and so alleges, that the principal other ground relied upon by said firm of Procter & Gamble was a comparison between soap and other articles then classified in the sixth class in carload quantities, notably, apples in bulk, cider, coffee, fish, starch, and sugar; whereas all of said articles are at present included in the fifth class in carload quantities.

V.

This respondent further answering says that by reference to the reports of the Interstate Commerce Commission it is advised that the said Interstate Commerce Commission made an order to the effect that on and after September 1, 1890, the defendants named in the petition of the firm of Procter & Gamble, being the above-mentioned proceedings "shall cease and desist from charging or receiving for the trans-

portation of common or laundry soap in carload lots, any greater rate per hundred pounds of the said soap and the package containing it, than is contemporaneously charged or received by them for like services in the transportation of articles enumerated in the sixth class of the classification of freight now in force over their respective lines."

The respondent, further answering, says that at the time of the entry of such order it was not a party to such proceeding, nor was this respondent a party to any classification described in such order, nor had this respondent began or entered upon the business of transporting freight or merchandise, and this respondent expressly denies that the order in said case operates as an estoppel, or in any manner affects the rights now existing of this respondent under the law in the proper conduct and management of its business, and expressly denies that such order has the effect to bind or determine the course or conduct of this respondent in the present conduct of its business, or that such order is binding upon this respondent in any respect, except in so far as the same may be an interpretation of the law by which persons, not parties, should be governed in the proper conduct of the business of transportation of freight. This respondent admits that in so far as such finding, determination, and order are consonant with reason and justice, as applicable to the present condition of business, and to the facts involved in this controversy, the same may be binding upon this respondent as matter of general law, to the extent that said In-
56 terstate Commerce Commission had jurisdiction of the subject-matter, but this respondent expressly denies that such order has the effect to determine any controverted question of law or fact involved in the petition of Procter & Gamble Company in this cause filed on February 24, 1900, and this respondent expressly denies that it is estopped or that its rights had been determined heretofore in said cause, and expressly denies that it was either, directly or indirectly, by representation or otherwise, a party to said proceedings and former determination.

This respondent, further answering, says that it is advised that an application for rehearing was made in said cause of Procter & Gamble on October 8, 1890, but that such application for rehearing was disposed of by the said Commission upon the point that "whether the profit to the manufacturer would enable soap to bear a higher rate than the groceries in the sixth class does not appear;" that such application for rehearing was based largely upon a prospectus issued on behalf of Procter & Gamble on July 14, 1890, three days before the decision of the Commission on such original petition, showing that the certified net profit from the business and sales of the said Procter & Gamble for the year 1889 amounted to $586,000, being 21.3 per cent. of their gross sales for that year, or 15.5 per cent. of the appraised valuation of their real estate, stock, plant, personal property, etc.; and, as this respondent is advised, and so charges the fact to be, such application for rehearing was declined by the said Interstate Commerce Commission at the time solely upon the ground that the affidavits submitted, showing that the practice of accepting shipments of soap at the net weights of the soap, had not prevailed at other

points than Cincinnati and Ivorydale, were insufficient and inconclusive.

This respondent further answering, expressly denies that it had any connection with or was or is in any manner bound by any determination, decision, finding, order, or judgment, either upon said original petition or upon rehearing of the same, except as above stated as matter of general law, for the reason that this respondent was not a party to that proceeding, original or upon rehearing, directly or indirectly. This respondent further answering, says that the said finding and order of the said Interstate Commerce Commission in the said case of the firm of Procter & Gamble, decided in the year 1890, in so far as it determines any question of law or fact involved in the present controversy, is wholly inoperative and void on account of the want of jurisdiction and authority in law of the said Interstate Commerce Commission, and that in so far as the same may be applicable to this controversy, is wholly inoperative and of no effect as to this respondent, for the reason that this respondent was not a party thereto. This respondent further answering, says that in truth and in fact it has not been governed by the said order, made by the said Commission in the said cause of Procter & Gamble, decided in 1890,
57 but says that since August 1, 1899, it has conducted its own business within the limits well defined by law, and has sought to promote the interests of the general public in the conduct of such business, and has charged, collected, and received for the transportation of common soap in carload quantities and for the transportation of common soap in less than carload quantities none other than reasonable rates and charges, and has not been guilty of any wrongful or unjust discrimination against the complainant or any person or persons whomsoever in relation thereto.

This respondent further answering, says that when one or more railroad companies are required to conform to any particular order affecting interstate business, with which other railroad companies are required in the transportation of freight to have and maintain through arrangements or connections, then all railroad companies maintaining such connections or transacting such through business are required to substantially conform to such an order, and when one railway company is required to be governed by certain classification, or to change the classification upon a given article of freight, then all other railroad companies seeking to do business for the public and to maintain such other connection and business arrangement must conform thereto, and for that reason Commission should be slow to make changes in such classification or to undertake to interfere with the power, right, and authority of railroad companies engaged in such business to make their own classifications, so long as the given article is being transported at a reasonable rate, and so long as no wrongful or unjust discrimination is practiced in regard to any particular shipper.

This respondent further answering, alleges upon information and belief as to all matters prior to August 1, 1899, that the classification of soap in carload quantities as sixth class was not satisfactory and did not produce a proper or sufficient remunerative rate for the service

performed in the transportation of that article by a large majority of the carriers using such classification; that it was found necessary to discontinue and change the difference in classification between fancy, castile, or toilet soap at second class in any quantity, and common or laundry soap at fourth class in less quantities than carload lots, and fifth class in carload lots, and to establish in lieu thereof one uniform classification of soap, regardless of character, kind, or quality, because of the impracticability of distinguishing between various kinds of soap, especially those advertised and described as suitable for both toilet and laundry soap, including the "Ivory" soap, made by the complainant and so advertised and described by it, so that the classification of the article thereafter included soap of widely varying values. The necessity for this action was enforced by a decision rendered by the Commission on May 16, 1891, in the case of Beaver & Company *v.* Various Railway Companies, in which it was held that

"where two kinds of soap are made use of for the same pur-
58 pose, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should, both for purposes of transportation and rating, be placed in the same classification."

VI.

Respondent, in further and general answer to the petition of the complainant, avers as follows: That changes in ratings of various articles were made in Official Classification No. 20 on January 1, 1900; that in response to requests, interested railway companies gave a hearing in the city of New York on January 22 and 23, 1900, of which due public notice was given to all shippers, at which time opportunity was afforded for the full presentation of all objections to such changes in classification, among which were submitted the objections of the complainant to the revised classification of soap; that following such hearing due notice and careful consideration was given by the carriers to such objections of shippers, with the result that the various railway companies using the Official Classification have severally adopted certain modifications in the classification of articles advanced in the said Official Classification No. 20, and such modifications have been published by supplement to take effect March 10, 1900. On and after March 10, 1900, soap in less than carload quantities will be classified at third class, subject to a reduction of 20 per cent. (but not less than fourth class), and in carload quantities at fifth class. The effect on such change in classification will be to reduce the rates upon less than carload shipments to such an extent that the differences between the less than carload and carload rates chargeable under the revised classification will be substantially the same as, or less than, the differences between the less than carload rates at fourth class and the carload rates at sixth class which prevailed prior to January 1, 1900.

This respondent, further answering, avers that the conditions affecting the classification and transportation of soap at the present time are dissimilar from those which obtained at the time of the complaint of the firm of Procter & Gamble, above mentioned, and upon which

the said Commission acted; that the classification of soap which will become effective on March 10, 1900, will establish reasonable and reasonably relative rates for the service to be performed in the transportation of said articles; that said revised classification will not subject complainant or the shippers of soap to any undue or unreasonable prejudice or disadvantage and will not be in violation of any of the provisions of the act to regulate commerce as amended; and respondent believes, and so charges the fact to be, that the said new classification of soap will prove generally satisfactory or acceptable to other soap manufacturers than the complainant. This respondent is advised and believes that any reduction which might be made in
59 the classification of soap in carload quantities would inure most largely to the advantage and benefit of the complainant and would operate to the detriment and disadvantage of other soap manufacturers, by reason of the magnitude and character of complainant's business and because complainant maintains distributing depots or agencies in the different cities of the various States, to which complainant makes shipment of soap in carload quantities, and thence distributes the same in lesser quantities to smaller purchasers, and that such methods and means are practically unavailable to the large majority of other soap manufacturers conducting their business upon a smaller scale.

VII.

This respondent, further answering generally, says that it will be impossible for it to continue in the business of a common carrier, either with profit to itself or advantage to the public, unless it be permitted to fix some general classification of freight which will enable it to deliver to connecting carriers and to receive from such connecting carriers freight classified upon a common basis, so that the public may know upon what basis such business will be conducted and so that this respondent may act advisedly in accepting shipments of freight destined to or from points not on its line; that such absolute necessity exists as a fact, and that if it be not permitted to make such classification according to the best known methods and information obtainable by it, and to maintain and be governed by the same, provided such classification does not impose, directly or indirectly, an unreasonable rate, charge, or toll for the transportation of any given article of freight, and provided such classification does not unjustly or wrongfully discriminate against any particular shipper or number of shippers, then this respondent will be compelled to segregate its line to that of a single railway, without through arrangements or connections, and the public will thereby be greatly injured, harmed, and serious detriment and disadvantage be imposed upon all shippers, as well as the almost total destruction of the business of the said respondent as a common carrier; that immediately prior to the filing of the petition in this case there had been a general upward tendency in the price or cost of iron, materials, and supplies necessary to be used in the operation of a railroad; that this respondent has been compelled to pay such increased cost and will be compelled to meet the conditions which confront it; that for a number of years prior to the

filing of this petition the railroad property which now belongs to this respondent has failed to pay anything more than fixed charges, and for a time even failed to pay such fixed charges in full, and that respondent, in purchasing this property and spending considerable sums of money in its improvement, had hoped to be able to conduct its business within legitimate lines, so as to further and pro-
60 mote the general interest of the country, and particularly the interests of shippers engaged in the transportation of freight, to whom this respondent must look for its support and business; that in the determination of all the questions which have been presented, and especially in the matter of classification of its freight, respondent had endeavored to be just and reasonable, with the single end in view of conducting such business lines which would insure the support, patronage, and business of all shippers and at the same time enable said railroad company to be self-supporting, able to pay its fixed charges, and to conduct its business upon legitimate lines, so as to promote the general interest and advantage of all persons interested; that this respondent again expressly denies that it has collected, charged, or received, or that it intends to collect, charge, or receive, any unreasonable rate or toll from the complainant for the transportation of common soap in carload lots or for the transportation of common soap in less than carload lots, and expressly denies that it has been guilty of any wrongful or unjust discrimination against the complainant.

Wherefore respondent prays that the said petition be dismissed.

THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY,
By ROBERT E. HAMILL,
Its General Attorney.

STATE OF OHIO, *Hamilton County, ss:*

S. T. McLaughlin, being duly sworn, says that he is the general freight agent of the Baltimore and Ohio Southwestern Railroad Company, defendant in this proceeding, and that the foregoing answer is true, as he verily believes.

S. T. McLAUGHLIN.

Subscribed and sworn to before me by the said S. T. McLaughlin, this 12th day of March, A. D. 1900.

JNO. M. WALSH,
Notary Public, Hamilton County, Ohio.

61 & 62 EXHIBIT G.

63 THE PROCTER & GAMBLE COMPANY, Complainant,
v.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, ET AL., Respondents.

Before the Interstate Commerce Commission.

Separate Answer of the Baltimore and Ohio Railroad Company.

To the Honorable the Interstate Commerce Commission:

1st. This respondent admits that the complainant is a body corporate, organized under the laws of the State of New Jersey, to manufacture and sell soap, and that this respondent is a common carrier by railroad, subject to the act to regulate commerce and the amendments thereto, substantially as alleged in the first and second sections of the petition herein.

2d. This respondent admits that it has adopted Official Classification No. 20 as to the classification to be used in the transportation of property on its lines of railroad, and that for the purpose of determining the rates of freight chargeable on soap the said commodity is, by said Official Classification No. 20, classified at third class in less than carload quantities and at fifth class in carload quantities. The same classification has been adopted by other railroad carriers, including the other companies mentioned in the petition, each such carrier acting for itself, and as modified by supplements issued from time to time said classification has been, since January 1, 1900, and is now, in use on the lines of this respondent and on the lines of the other respondents.

This respondent denies that common soap in carload lots is placed and maintained in the fifth class wrongly or unjustly, and that common soap in carloads properly and rightly belongs in the sixth class; and denies that common soap in carloads, and the traffic therein, possess in a degree equal to any article in said sixth class, and the traffic therein, a union of qualities and conditions which do and of right should determine its class, and that the classification of common soap in carloads at fifth class subjects said commodity, or the traffic therein, to any undue or unreasonable prejudice or disadvantage, or renders the rates chargeable thereon unjust, unreasonable, or in any way unlawful.

This respondent also denies that common soap in less than carloads is wrongly classified under said Official Classification No. 20, especially as modified by supplement No. 3 thereto, and denies that common soap in less than carload lots, and the traffic therein,
64 possess in a degree equal to any article in the fourth class, and the traffic therein, a union of qualities and conditions which do and of right should determine its class, and that the classification of common soap in less than carloads and the rates charged thereon subject the said commodity and traffic therein to any undue or un-

reasonable prejudice or disadvantage whatever, or the exaction of any rate unjust, unreasonable, or in any way unlawful.

This respondent also denies the allegation of the petition that prior to January 1, 1900, in similarly described classifications, Nos. 1 to 19, inclusive, common soap was classified fourth class in less than carload quantities and sixth class in carload quantities. And this respondent avers that in Official Classifications Nos. 1 to 8 soap was continuously classified as follows: "Soap—fancy, castile, and toilet—in boxes, second class in any quantity; soap not otherwise specified, in boxes or barrels, fourth class in less than carload quantities; fifth class in carload quantities."

Also that in Official Classification No. 14 soap in carload quantities was classified fifth class.

3d. In answer to the allegations contained in the fourth section of the petition, this respondent says that in the proceedings before this honorable Commission, on the complaint filed by the firm of Procter & Gamble against this respondent and other carriers, September 12, 1889, the controlling issue was, as stated in the report and opinion of the Commission, "Whether the rate charged to and paid by the complainants to the respondent railroads for the transportation of the complainants' common soap in carload lots is just and reasonable," The conclusion of the Commission on the facts presented at that time and the circumstances then existing was expressed as follows: "Our best judgment is, upon the showing now made, that the charge of the defendant lines for the transportation of common soap should be limited to what it was before they charged for the gross instead of the net weight."

In the memorandum of opinion entered December 26, 1890, by the Commission, disposing of a motion for rehearing, after showing the insufficiency of the affidavits filed by the defendants on the motion for rehearing to show that the practice of charging on net weight and not gross weight was a practice confined to a few of the carriers only, the Commission said: "Without passing on the other grounds of defense suggested, the petition for rehearing is denied on the ground stated, which leaves the suspended order in full force and effect, but leaves the Commission, with reference to its future action, as it was left in the former opinion, by the expression as follows: 'It is not improbable that in a more numerous classification than is found in the Official Classification a place might be found that would more exactly fit common soap than the lowest class, and it is not
65 intended that this decision shall be regarded as necessarily conclusive as to rate upon the committee which is now understood to be engaged in an attempt to construct an improved classification with more classes than are found in the existing classification.'"

The classification under discussion in the said proceedings in 1889 and 1890 was Official Classification No. 8, in which soap was classified as follows: "Soap—fancy, castile, and toilet—in boxes, second class in any quantity; soap not otherwise specified, in boxes or barrels, fourth class in less than carload quantities; fifth class in carload quantities."

Subsequently, by reason of the introduction by the complainant company and others of soaps advertised, sold, and used both for laundry and toilet, it became impracticable to maintain any classification distinction between fancy, castile, and toilet soaps and common or laundry soaps.

This honorable Commission, on May 16, 1891, in the case of Beaver & Co. against several of the same railroad companies parties herein, found and held that the brands of soap so advertised, sold, and used both for laundry and toilet should be transported as laundry soaps and not as toilet soaps. The item "soap in packages" in Official Classification No. 20 therefore includes the fancy, castile, and toilet soaps (which, under Official Classification No. 8, were made second class in any quantity), as well as the common or laundry soaps which by that classification were made fourth class in less than carloads and fifth class in carloads.

This defendant further states that actual trial and experience has shown that the profits to manufacturers, including the complainant, would enable soap to bear the rates fixed by Official Classification No. 20, in common with the other staple groceries, and that this respondent and the other railroad carriers could not afford to carry soap, sugar, coffee, and other such relatively valuable articles, at the sixth-class rate, which is so much lower than such articles can profitably and justly bear; because to continue such extremely low rates would make it impossible for this respondent and the other railroad carriers to meet the constant demands on them for improved facilities, better service, and more costly equipment. Especially is this true under the business conditions which have existed during the past calendar year, now exist, and seem likely to continue, and under which the prices of almost all materials and supplies necessary in the business of this respondent and the other railroad carriers have increased more than 50 per cent. from what they were during the previous calendar year.

This respondent denies that the increased cost of transportation is only apparent, as alleged in the petition, and denies that such increased cost has been more than offset by the very great general reduction in the actual and permanent cost of operation due to changes and improvements in tracks, locomotives, roadbed, and equipment.

66 4th. In answer to the allegations of the petition relative to the difference in rate between less than carload shipments and carload shipments under said Official Classification No. 20, this respondent says that having, by published notices, invited all shippers to present their objections, if any, to the classification of merchandise contained in said Official Classification No. 20, this respondent, together with the other railroad carriers, by their respective representatives, did, on January 22 and 23, 1900, hear and receive all objections offered to said classification, and among others the objections of the complainant to the classification of soap. That following such hearing this defendant, by its officers and agents charged with that duty, did give due and careful consideration to the objections to the classification of soap, among other articles, with the result that this respondent and other railroad carriers have severally adopted certain

modifications in classification of soap, which modifications have been published by supplement No. 3 to the said classification taking effect March 10, 1900. On and after March 10, 1900, soap in less than carload quantities has been classified at third class, subject to a reduction of 20 per cent. (but not less than fourth class), and in carload quantities at fifth class. The effect of this change in classification is to reduce the rates upon less than carload shipments so that the difference between less than carload rates and the carload rates is substantially the same as (and in many cases less than) the difference between less than carload rates and carload rates under the classification which Official Classification No. 20 superseded.

5th. This respondent has no knowledge of the matters stated in the fifth section of the petition, except that it is informed and believes that the complainant prepays freight on its shipments. As to the other matters alleged in said section, it neither admits nor denies the same, but leaves the petitioner to such proof thereof as it may be advised.

THE BALTIMORE AND OHIO
RAILROAD COMPANY,
By HUGH L. BOND, JR.,
General Attorney.

STATE OF MARYLAND, *City of Baltimore, to wit:*

T. W. Galleher, the general freight agent of the Baltimore and Ohio Railroad Company, the respondent named in the foregoing answer, having been first duly sworn, deposes and says that the matters stated in the foregoing answer are true as he verily believes.

T. W. GALLEHER.

Subscribed and sworn to before me this 3d day of April, 1900.

GEO. W. HAULENBEEK,
Notary Public.

67 & 68 EXHIBIT H.

69 THE PROCTER & GAMBLE COMPANY
v.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE AND OHIO RAILROAD COMPANY.

Decided April 10, 1903.

1. Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced dates by billing at net weight, while many other shippers of the

same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents, is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discontinuing the practice of shipping at net weights in any part of the territory, yet, on the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected and either authorized by carriers generally in that territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers applied their established charges on the basis of gross weights. Decision in Procter & Gamble *v.* Cincinnati, Hamilton and Dayton R. R. Co. *et al.* 4 I. C. C. Rep., 87, 3 Inters. Com. Rep., 131, which was based mainly upon testimony indicating general prevalence of the net-weight practice, held, in the light of further evidence, not controlling in this case.

2. The presumption as to the reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where such rates have been established by carriers in compliance with a decision and order of the Commission.

3. Profit secured by complainant from the operation of a railway connecting with the defendant lines and from other special advantages tending to diminish the amount of its transportation expenses would have very material bearing if the sole question involved was the reasonableness of rates charged to complainant, or if the rates exacted from it were drawn into comparison with those charged to competing soap manufactures; but where, as in this case, the chief question is as to the justice of a change in the classification of soap, not only as regards complainant, but as affecting all soap shippers in the classification territory, no order could be made respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers in that territory; and as the case mainly involves the general question of classification, it must be decided in accordance with the principles which properly govern the classification of freight articles.

4. The action of defendants in placing soap in carloads with common grades of grocery and other general merchandise in the fifth class of their freight classification and refusing to reduce soap in carloads to the sixth class, which includes only low-grade freights, held not to be unlawful while other articles with which carload soap is properly compared are retained in the fifth class of such classification; but this shall not operate to preclude the Commission from holding in an appropriate proceeding that fifth-class rates in this territory are excessive.

5. The privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers

and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers; but when it appears, as in this case, that shippers like complainant are subjected to additional disadvantage under the operation of a mixed carload rule through the increase in a long-standing less than carload rate, the effect of that rule is properly to be considered in determining the reasonableness and justice of such increased rate.

6. The action of defendants in increasing the classification of soap in less than carloads from fourth to third class was unreasonable and unjust under the act to regulate commerce, and their subsequent practice of applying 20 per cent. less than third-class rates on such traffic is also unlawful.

John W. Warrington and *Mortimer Matthews* for complainant.
Lawrence Maxwell for the P. R. R. Co., the P. C. C. & St. L. Ry. Co., and the C. H. & D. R. R. Co.
Edward Colston for the B. & O. S. W. Ry. Co.
S. O. Bayless for the N. Y. C. & H. R. R. R. Co., the L. S. & M. S. Ry. Co., and the C. C. C. & St. L. R. Co.

Report and Opinion of the Commission.

KNAPP, *Chairman:*

In this case the complainant challenges the legality of the change made by defendants on January 1, 1900, in the classification of common or laundry soap from sixth to fifth class in carloads and from fourth to third class in less than carloads. The increased rates upon common or laundry soap resulting from such change in classification are alleged by complainant to be unreasonable and unjust and to subject the traffic in that commodity, both in carloads and less quantities, to undue and unreasonable prejudice and disadvantage in violation of the act to regulate commerce.

The complaint further sets forth that some of the defendants herein and the predecessors of the other defendants were defendants in three several proceedings brought before this Commission on September 12, 1889, by the firm of Procter & Gamble, complainant's predecessor in business, in which complaints were made against the then prevailing fifth-class rates upon common or laundry soap in carloads; that after investigation the Commission issued an order in
71 those cases requiring the defendants therein to cease and desist from charging more for the transportation of carload shipments of that article than rates contemporaneously charged by them for like service in the transportation of articles in class six of the classification of freight then in force over their respective lines; that after denial by the Commission of an application for rehearing such carriers did, as finally required by the Commission, obey the order so made from January 20, 1891, until January 1, 1900, when by the change in classification above mentioned the rates upon common soap were advanced from sixth to fifth class; that such disobedience was part of a joint arrangement between the defendants

in this case and all other railroads in Official Classification territory; and that by such action a number of articles were changed from lower to higher classes for the sole purpose of increasing transportation revenues.

Complainant further alleges that it prepays freight charges upon all property shipped from its factories, and demands reparation by repayment of all transportation charges in excess of sixth-class rates on carloads and fourth-class rates on less than carloads exacted by defendants from complainant for the transportation of common soap from January 1, 1900, to the date of the hearing in this proceeding.

The answers of the defendants deny generally the violations of law alleged in the complaint.

From the great mass of testimony and exhibits composing the voluminous record in this case the facts deemed material to a proper determination are found as follows:

Findings of Fact.

Complainant, the Procter & Gamble Company, a corporation organized under the laws of New Jersey, became the successor of the firm of Procter & Gamble on or about July 1, 1890. It is engaged at Ivorydale, about 7 miles north of the city of Cincinnati, in the State of Ohio, in the manufacture, shipment, and sale of soap, candles, glycerin, stearic acid, and some other products. Its principal offices are in Ivorydale and Cincinnati. The large portion of its business consists of the manufacture and shipment of soap. The output of its plant amounts annually to about 100,000,000 pounds, and is, accordingly to an estimate given in testimony, about one-tenth of the total yearly product of soap in the United States. Complainant's shipments average about 350 in number for each working day. Its entire business for 1899 involved 5,799 carloads of freight received from and 4,684 carloads of freight delivered to railroad companies at Ivorydale. Coal and waste in manufacture account for the difference between the aggregate amounts of in and out going freight. The shipments of soap by complainant from its factories average about 65 per cent. in carloads and 35 per cent. in less than carloads.

72 The capital stock of the complainant corporation is $4,450,000, one half of which is common stock and the other half preferred. The preferred stock pays 8 per cent. dividends. The common stock paid dividends at first at the rate of 6 per cent., later 12 per cent., and in recent years 20 per cent. The company has a surplus of about $1,000,000. The business as a whole has been and is extremely profitable. The profits upon common laundry soaps are far less than those which arise from the higher grades of laundry or bath soaps. The complainant does not manufacture any soap used exclusively for toilet purposes. It does make and sell a brand called "Ivory soap," which is used both for laundry and toilet purposes and which, on account of its quality and constant and thorough advertisement by complainant, has an extensive sale in all sections of the country. A large part of complainant's profit is obtained from

the sale of this brand which, because of such special demand, is in the nature of a proprietary article rather than in the list of common competitive soaps, and from the manufacture and sale of glycerin, candles, and some other products of its plant besides soap.

No attack is made by complainant upon defendants' classification as applied to Ivory soap. The complaint is confined to the effect of that classification upon common laundry soap.

2. The defendants are common carriers of interstate traffic, including soap shipped by complainant and others, in the territory directly affected by this proceeding, which is, generally speaking, all that portion of the United States lying east of the Mississippi River and Chicago and north of the Ohio and Potomac rivers. This territory is called "Official Classification territory," and the classification of freight articles transported between points in such territory is governed by what is known as the "Official Classification," which has been adopted and is generally applied by the defendants and practically all other railroad carriers therein. This classification is prepared by the "Official Classification Committee," the membership of which is composed of representatives from railway systems in the territory described. As advertised in the Official Railway Guide, the Pennsylvania, New York Central and Hudson River, Baltimore and Ohio, Lake Shore and Michigan Southern, and Cincinnati, Hamilton and Dayton, defendants in this case, are represented upon that committee. The Pittsburgh, Cincinnati, Chicago and St. Louis is controlled by the Pennsylvania Company, which is also represented on the Classification Committee. The Baltimore and Ohio Southwestern is part of the Baltimore and Ohio system.

On January 1, 1900, the classification of soap was advanced in the Official Classification from sixth to fifth class for carloads and from fourth to third class for less than carloads, and thereby the rates upon soap shipments in the territory affected were substantially increased. Through concerted action, these and numerous other advances in classification and rates were made effective on the same date and upon practically all lines in such territory. On March 30, 1900, the classification of soap in less than carloads was reduced by the classification committee to 20 per cent. below third class, but not less than fourth class, and such intermediate class between third and fourth classes was thereupon established by the defendants and other carriers in Official Classification territory for soap in less than carloads, and also made to apply at the same time upon a number of other articles. The classification of soap as so changed and the subsequent enforcement of the higher charges are the subjects of complaint in this controversy. These classification changes were made effective in No. 20 of the Official Classification and have been continued in subsequent issues.

3. The first Official Classification was adopted and put in force by carriers throughout the territory to which it applies on April 1, 1887, four days prior to the time when the act to regulate commerce took effect, and from that date until about June 22, 1891, common or laundry soap was in the fifth class of that classification for carloads and in fourth class for less than carloads. Prior to April 1, 1887,

rates relatively the same as fifth class under Official Classification No. 1 had been applied to soap of this description. Toilet soap shipped in any quantity were in the second class of Official Classification No. 1, that is, from and after April 1, 1887, and they were continued in that class by the carriers until some time in June, 1891, when soaps of all descriptions were placed together by the carriers in sixth class for carloads and fourth class for less than carloads. This classification of soap remained in force until January 1, 1895, when the carriers again placed soap in carloads in class 5 of the classification, but kept it in that class only about two weeks, the sixth-class rating for carloads having been restored on January 15, 1895. No further change was made in the classification of this article until January 1, 1900, when the advances to fifth class, carloads, and third class, less than carloads, were made, and this action, as before found, was modified on March 10, 1900, so that 20 per cent. less than third-class rates but not lower than fourth class, were given to less than carload shipments.

4. The change made in the classification of common soap in carloads from fifth to sixth class in June, 1891, was not voluntary on the part of the carriers. That change was made in compliance with a decision of this Commission on July 17, 1890, reaffirmed upon denial of a petition for rehearing on December 26, 1890, and the final order of the Commission issued on the last-mentioned date, in the cases brought by complainant's predecessor, the firm of Procter & Gamble, against the defendants in this proceeding or their predecessors (4 I. C. C. Rep., 87, 443; 3 Inters. Com. Rep., 131, 374). The change in the classification in June, 1891,

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whereby toilet soaps were reduced from second class, any quantity, to fourth class for less than carloads and sixth class for carloads, and thereby made to take the rating provided for common soap, was made effective shortly after the decision of this Commission on May 16, 1891, in the case of Beaver & Co. *v.* Pittsburg, Cincinnati & St. Louis Railway Company *et al.* (4 I. C. C. Rep., 733; 3 Inters. Com. Rep., 564). In that case the Commission decided that—

"Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification."

The Commission found in that proceeding that "Grandpa's wonder soap," manufactured by Beaver & Co., and "Ivory soap," manufactured by the Procter & Gamble Company, were both represented as suitable for laundry and also for toilet purposes, and that both were used for those purposes; but the wonder soap had been given the higher second-class rating for toilet soap and the ivory soap had been taking the laundry-soap rate. Other soaps besides ivory were also compared with wonder soap in that case. It is claimed by defendants that this decision of the Commission in the Beaver case, together with the impracticability of distinguishing between the various kinds of soap, impelled the carriers to classify all soaps

alike, regardless of differences in quality or the purposes for which they are used. Where, as in the case of grandpa's wonder, ivory, and other soaps, the same brand may be used both for household and toilet purposes, the difficulty of determining whether it properly belongs to the toilet or household variety is apparent, but no such difficulty presents itself in the case of soaps manufactured, sold, and generally used for toilet purposes. Placing all soaps in the same class tends, however, to prevent misdescription by shippers of the more valuable grades in order to obtain rates applicable to the common variety. Toilet soaps are said to constitute only about 1 per cent. of the total quantity of soap usually manufactured.

The change in the classification of carload soap from sixth to fifth class on January 1, 1895, was apparently not continued in effect, because lines leading from Cincinnati refused at that time to concur in the higher rating. On January 1, 1900, however, five years later, all the lines in Official Classification territory agreed upon and adopted fifth-class rating for carloads and also increased the less than carload rating, as above stated.

5. The order of the Commission of July 17, 1890, required the defendant carriers in the first Procter & Gamble cases to "wholly cease and desist from charging or receiving for the transportation of common or laundry soap in carload lots any greater rate per 100 pounds of said soap and the package containing it than is contemporaneously charged or received by them for like service in the transportation of articles enumerated in class 6 of the classification of freight now in force over their respective lines."

This order was based upon the report and opinion therewith filed, and in such report and opinion common soap was compared with articles then carried by the carriers as sixth-class freight, and it was also found that soap, while nominally in the fifth class, had nevertheless been carried up to May, 1889, at net weights, instead of gross weights including the boxes in which it was packed, and that this practice had resulted in giving such soap in carloads rates substantially equal to sixth-class rates. The decision rested therefore upon two principal grounds: Comparison with sixth-class articles and the net-weight practice.

An application for rehearing was subsequently filed by the defendants other than those operating lines at Ivorydale, and at the hearing upon such application affidavits were presented by the applicants for the purpose of showing that charging only for net weights had not been a general practice, but such affidavits were found insufficient by the Commission to indicate the error in findings alleged by the applicants, and thereupon the application for rehearing was denied.

The finding in the former cases that common soap in carloads was carried at net weights prior to May, 1889, is again attacked in this proceeding by the defendants and sought to be sustained by the complainant. A materially different showing is now made; first, the testimony of a greater number of witnesses covering many more places of distribution and containing definite statements upon the point is presented, and, second, the average weight of boxes in which

soap is now packed for transportation and sale is materially less than that of the boxes formerly used for such purpose. The present record shows that up to May, 1889, from some time in 1885, and probably in earlier years, a great many shipments were carried from Buffalo, Pittsburg, Allegheny, Detroit, Chicago, Indianapolis, Cincinnati, Zanesville, St. Louis, Logansport, Rock Island, Jackson, Battle Creek, Peoria, and other western points at weights which did not include the weight of the boxes, and that this was a more or less common practice among shippers from those points and was not entirely confined to soap; that in some instances the weight paid for was even less than the weight of the soap, but that, except at Cincinnati and a few other places in that section, the practice was not carried on in accordance with an express agreement with the railway officials. It is plain, however, that the operating agents of the railways had ample opportunity to know and in most cases must have ben aware of the understatements of weight by shippers. The boxes were stamped with the weights in many, if not a majority, of the shipments, some of which weights were stated as follows: "60 one-pound bars," "60 bars, 60 pounds," "100 cakes, 75 pounds."

These weights tend to indicate the weight of the soap alone,
76 and any doubt as to whether they were gross or net could easily have been removed by weighing a single box. The inference seems warranted that the practice of shipping at net weights from the points mentioned during a period of years was known from the weighing of the boxes by agents or their actual understanding with shippers. On the other hand, the freight agents employed by the carriers during the time mentioned who were called as witnesses by defendants testified that because of lack of weighing facilities in some cases, and in others because of lack of time, they were unable to verify shippers' weights, and they deny, without exception, that they had any knowledge of soap having been shipped from their stations at less than gross weights. The custom of shipping at net weights certainly prevailed among shippers at the points above stated, but except at Cincinnati and points in that territory there was no understanding with the railway companies amounting to open sanction of the practice. What took place in this respect prior to April 5, 1887, when the act to regulate commerce became effective, was not affected by any Federal regulation, and even after that date and until March 2, 1889, when the act was amended, shippers were not specifically prohibited from indulging in underbilling. On or about May 1, 1889, the carriers established a system of inspection and weighing which, in connection with the operation of the amended statute, resulted soon afterwards in preventing or correcting underbilling very largely, and while the practice among shippers has never been wholly eradicated it has nevertheless been reduced to such extent that cases of that character are now regarded as exceptional. This underbilling of soap was practiced but little, if any, from 1885 to 1889 at points east of Buffalo and Pittsburg in Official Classification territory. Careful examination of the findings in the decision of the Commission in the old Procter & Gamble cases indicates that the fact as to the general prevalence

of the net-weight practice was not a matter of much controversy at the original hearing, and that it was only questioned seriously, and then by means of insufficient and defective affidavits, on the application for rehearing filed by defendants in those proceedings. The evidence clearly establishes that whatever knowledge railway officials may have had of the practice, except possibly in Cincinnati and that section, it was not such an established regulation as that, after April 5, 1887, when the act took effect, it could probably be applied by carriers as a rule governing transportation charges. The evidence also shows that numerous soap manufacturers in Official Classification territory paid on gross weights during the years mentioned. The net-weight practice, so far as it obtained, was simply one of many devices resorted to by a number of shippers and tacitly permitted by some carriers, or purposely allowed by other carriers, to obtain or afford lower rates on this commodity.

77 The testimony in the former Procter & Gamble cases showed that the weight of the box was then about 16⅔ per cent. of the gross weight. It appears in this case that the percentage of weight represented by the box is not more than 11 per cent. The gross weights of packages commonly shipped by complainant are 66, 70, and 83 pounds, and the weights of the boxes used are 6, 7½, and 8 pounds, respectively, or not far from 10 per cent. of the entire package; but boxes used by some other shippers are heavier, and a fair average is believed to be about 11 per cent. Such decrease in the weight of boxes used for packing soap results from different construction and from the use of lighter lumber, such as cottonwood. The difference between sixth and fifth class rates in Official Classification territory amounts generally to about 20 per cent. of sixth-class rates, and is approximately 16⅔ per cent. or one-sixth of the fifth-class rates. While the box weighing 16⅔ per cent. of the total weight approximated such difference when applied to the rate, the present weight of the box, which is only 11 per cent. of the total, would when applied to the rate be only about one-half of such difference between sixth and fifth class rates, conceding the difference to be 20 per cent., and something over five-eighths, if the difference in the rates is taken at 16⅔ per cent.

6. In our decision of the former Procter & Gamble cases common soap in carloads was specially compared with the following articles, which were then in the sixth class of the Official Classification: Apples in bulk, cider, owner's risk prepaid; coffee; smoked fish; flour; grain; salt; starch in barrels, and sugar. In Official Classification No. 20, and in the present Classification No. 23, all of these articles except flour, grain, and salt are in the fifth class. While starch is in the fifth class of the classification it is given lower commodity rates, which will be referred to further on in this report.

Comparisons were also made in the former cases with the Southern and Western Classifications. In the Southern it was found that common soap, coffee, fish, glucose, rice in barrels, and sugar were in the same class, the sixth. In the present Southern Classification laundry soap, in any quantity, is still in sixth class; and castile and toilet soaps are fourth class, any quantity. Coffee, green or roasted, is

fourth class, single sacks, and fifth class, double sacks, any quantity. Fish, dried or smoked, is third class, any quantity. Glucose takes molasses rates, and molasses is in the fifth class for carloads. Rice in carloads is in Class D, which also covers grain; and sugar in any quantity is class 5 in barrels, boxes, or double sacks, and class 4 in single sacks. In the Western Classification common soap was at the time of the former decision in fourth class, less than carloads; and fifth class, carloads; and sugar, coffee, and heavy staple groceries took the same rating. In the present Western Classification soap is still so classed. Coffee takes various ratings for less than carloads, from first to fourth class; and fifth class, carloads. Sugar is fourth
78 class, less than carloads; and fifth class, carloads. For staple grocery articles in carloads the fifth class is applied, and less than carloads take various ratings from the first to the fourth class. These ratings in the Western Classification place common soap in carloads with common groceries in the fifth class; but in the Southern, common soap has been retained in the sixth class, while the ratings of some of the other articles with which it was compared in our former decision have been advanced. Commodity rates lower than sixth class are also in effect on soap to some points in the South.

7. Common soap for laundry and other household purposes is produced in practically all sections of the United States. Nearly every considerable town or city has one or more soap factories, the output from which is sold and consumed in the same locality or at nearby points, and these local plants obtain the raw material required for soap manufacture largely from the place of their location or the surrounding section of country. There are also numerous large common-soap factories located in various cities throughout Official Classification territory, the product of which is sold under advertised names and shipped to jobbers who supply the retail trade generally in different sections of the country, or, as in the case of complainant, in all parts of the United States. These large manufacturers compete actively with each other in the markets of sale and consumption, and they all meet also the competition of the local factories. While those who produce soap extensively (and many of the smaller producers as well) advertise their brands, and thereby secure some special demand for their wares by consumers, the like grades or kinds are well understood to be capable of substitution one for another in case of difference in price or some corresponding advantage given to the retailer or inclination on the part of the consumer. Owing to such widely diffused production and slight difference in the quality of similar grades, the manufacture, distribution, and sale of common soap is subject to general and severe competition.

Grease, tallow or other suitable fatty or oily substances and an alkali are necessary ingredients to saponification. The materials mainly used by complainant and other manufacturers are grease, tallow, cotton-seed oil, cocoanut oil, rosin, soda, and other alkalies. About 30 per cent of the weight of common soap is water. The shipment of articles used in soap making furnishes the railroads with considerable traffic in addition to the large quantities of soap shipped out from the factories. The complainant manufactures some 20 or 25 different brands of common soap the best of which is called

"Lenox," and this brand is sold in competition with many brands manufactured by other companies and firms. Thirty or more brands of soap are specifically referred to in the testimony.

8. In 1887 the ruling price of common soap was about
79 $3.50 per box of 100 cakes, or 75 pounds, for the better grades. In the latter part of 1899 and in 1900, about the time the changes in classification complained of were announced and took effect, the price of such soap had fallen as low as $2.50 per box, but owing to a decided advance in the price of raw materials, and possibly the advance in freight rates, the larger soap manufacturers then increased the price from 15 to 25 cents a box. The Proctor & Gamble "Lenox" soap was raised from $2.55 to $2.70 per box at that time. Larger advances were made in the price of the cheaper grades, some of which were then selling as low as $1.05 per box of 60 pounds. The testimony indicates that the smaller distributing manufacturers as well as the local producers were content to follow the lead of the larger concerns in making this advance. Such increase in the price of common soap exceeded the advance in the freight rates caused by the change in classification on January 1, 1900. On a percentage basis, the advance in the price of soap was less than the advance in freight rates, but in actual amount it was much more. For example, the sixth-class rate from Cincinnati to East St. Louis is 12 cents and the fifth-class rate is 15 cents, a difference of 3 cents, while the advance per box of Lenox soap was 15 cents, and in some instances, as above stated, the advance in the price was increased by as much as 25 cents. The freight rate was advanced 25 per cent. in the case of the rate from Cincinnati to East St. Louis, while the price of Lenox soap was increased not quite 6 per cent. Comparisons based on the rates to the East make the differences in rate caused by change in classification 4½ and 5½ cents, respectively, to New York and Boston. For shorter distances the increase in the carload rates was much less, amounting in some instances to not more than 1 cent per 100 pounds.

Representatives of soap manufacturers testified that such advance in the price of soap was not equal to the increased cost of soap material and of wood for packages. The cost of soap material and of boxes was increased in 1900 over 1898 and 1899 by large percentages, but just how much such increases in cost to the manufacturer amounted to in cents per box upon any grade was not shown, nor does any basis appear in the record upon which it can be determined. The cost of soap material in 1900 to the manufacturer was but little higher than it was in 1890 or 1891, but in those years the selling price was considerably higher. Complainant's Lenox soap sold then for $3.50 per box as against $2.70 in 1900. There has been some decrease in the cost of soap manufacturing. This has not been brought about to much extent by changes in machinery or by material reduction in the cost of machinery, as the process of soap making is simply the combination of alkali and fats by means of boiling. The saving referred to chiefly resulted from methods adopted for the recovery of glycerin, which is one of the by-products of soap.
80 Alkali is run into the fat in liquid form, and combining with the fatty acids sets free the glycerin, which remains in solution. The water containing the glycerin is then washed out, and the

glycerin is recovered by evaporation and purified by chemical treatment and distillation. By this improved process complainant appears to have been able to save about 12 cents per 100 pounds in the manufacture of its competitive soaps.

The manufacturers usually prepay the freight and sell soap delivered to the jobber. Complainant charges about 10 cents per box more in New York and New England than it does in the Central West, 5 cents per box more to some points in Missouri and Iowa, and at the Missouri River the price is scaled up to 10 cents above the price in the Central West. These higher prices per box to eastern and western territories prevailed before as well as after the advance in freight rate on January 1, 1900. The Lenox brand of complainant at $2.70 per box of 100 cakes weighing 75 pounds (the Central West price) sells per pound to the jobber at 3.6 cents and per cake at 2.7 cents. This and other like brands are usually sold to consumers by the cake or half dozen or more cakes. The increase in the carload freight rate even at 4 cents per 100 pounds, which is more than the average increase, would, if laid upon the consumer, counting the gross weight at 83 pounds, be 3 1/3 cents per box, and, figured upon the pounds and number of cakes of soap in the box, less than one-half of a mill per pound and about one-third of a mill per cake. Under the general practice of prepayment of freight charges by the manufacturers, and making a common price to the jobbers as above described, and the universal competition between the manufacturers, the jobbers, and the retailers, it must be evident that the increased freight rate is borne by the manufacturers and perhaps to some extent by the jobbers. The aggregate amount represented by the increase in the rate on carload soap is nevertheless very large. Roughly estimated, 65 per cent. of complainant's shipments being in carloads and its output 100,000,000 pounds, an average increase in rate of, say, 3 cents per 100 pounds, means an additional freight revenue to the roads from complainant alone of $19,500 per year.

There is a marked distinction between the effect of an advance in the freight rate on an article of merchandise which is commonly sold by the retailer in very small quantities and under conditions where such advance is not likely to burden the consumer, nor to a great extent the dealer, and the case of a like advance applied to an article like hay, for instance, which is usually sold by the bale and often by the ton, and which affects the interests of all concerned in its production, sale, and use. Moreover, hay and other staple agricultural products are raised subject to varying climatic conditions affecting the amount of production, which are of course quite
81 beyond the control of the producer, and the prices for such products are fixed or largely determined by the variation in supply and demand, while, on the other hand, the producer of soap is able, ordinarily, to limit or increase the output of his plant to meet an assured or calculated demand, and thereby avoid a condition of overproduction and consequent decrease in the selling price of his product.

The evidence in regard to the profits of soap manufacturers generally, upon common competitive soaps is rather indefinite, the estimates given running all the way from nothing to 8 per cent. Five

to 8 per cent. was stated for complainant's common brands. How these profits were computed or what items entered into the calculation was not shown. All the testimony on behalf of soap manufacturers was to the effect that the higher freight rate, the greater cost of raw materials, and the reduced selling price for soap, have operated materially to dimininsh their profits, but there is no proof that the increase in freight rates resulting from higher carload classification had rendered or was likely to render the business unprofitable or in any way undesirable. Some of the manufacturers testified that under the higher rates complained of they had restricted distribution to a more limited territory, and it is apparently true that such increase in rate affects to same degree competition in the soap trade to the advantage of the smaller manufacture who ships over short distances and the local producer whose business is limited to supplying the trade in his home town.

During the past few years there have been some slight increases in local rates in the Central Western States, and perhaps in other parts of Official Classification territory, and in some instances the local rates have been somewhat reduced. Class rates generally, however, in Official Classification territory, are substantially the same as they were in 1887, except as changed by revision of the classification or the giving or withdrawal of commodity rates. Complainant contends that by the abolition of the so-called net-weight practice in 1889, the carriers increased the rates on carload soaps 16 2/3 per cent., such increase remaining in force until our decision in 1891, and that the change from sixth to fifth class rates in 1900, operated to increase the carload rate 20 per cent. The facts as to the net-weight practice have already been found, and in regard to the change from sixth to fifth class rates in 1900 we find that it did increase carload freights on soap about 20 per cent. These fifth-class tariff rates, however, are not generally higher than the tariff rates which were in effect from April, 1887, to June, 1891, and any departures from the tariff rates in effect between April, 1887, and May, 1889, resulting from the net-weight practice, were allowed to or secured by only a portion of the soap manufacturers in Official Classification territory,
and such departures during that period were allowed or per-
82 mitted in disregard of the requirement in the act to regulate
commerce that the established tariff rates should be observed and applied by the carrier upon all articles offered for transportation.

9. Prior to January 1, 1900—soap being then in sixth class—the rates from Cincinnati were 12 cents per 100 pounds to Chicago and 25 cents to St. Paul. After soap was removed to fifth class the rate to Chicago was 15 cents and the rate to St. Paul 31 cents. The rate to St. Paul was thus advanced 6 cents, while to Chicago the increase was only 3 cents. This occurred because shipments from Cincinnati to all points east of the Mississippi River are carried subject to the Official Classification, and the difference between sixth and fifth class rates under that classification to St. Paul was 6 cents, while between Cincinnati and Chicago such difference in class rates was 3 cents. Shipments from Chicago to St. Paul take the Western Classification, and there has been no change in the classification of soap in Western Classification territory. This overlapping of classification territories

and different classification of the same article in different territories have been the subject of frequent complaint on the part of shippers in the Central and West and Eastern States. Whether in the instance just mentioned any injustice is caused depends upon whether soap is properly placed in the fifth or sixth class of the Official Classification. If sixth is its proper class, the 6 cents increase in the rate to St. Paul was unreasonable and unjust, but if fifth is its proper class the increase in rate to St. Paul or increase of the difference in rates between Cincinnati and Chicago to St. Paul is merely incidental to a necessary readjustment. It should be further stated in reference to this St. Paul traffic that on February 12, 1900, the rates themselves from Cincinnati and other points to St. Paul were increased on all classes, and this action resulted in raising soap as a fifth-class article from 31 to 33½ cents per 100 pounds. The New York to St. Paul rates were then made 48½ cents, but on January 2, 1901, lower through rates were established between New York and St.. Paul, whereby the fifth-class rate was reduced to 46 cents.

10. Complainant's factories at Ivorydale are located within about 2,000 feet of the Cincinnati, Hamilton and Dayton Railway, and within about half a mile of the Baltimore and Ohio Southwestern and the Cleveland, Cincinnati, Chicago and St. Louis tracks. These are the initial and delivering defendant lines for complainant's traffic from and to Ivorydale. The Erie Railroad Company, which is not a defendant in this case, also reaches Ivorydale by a trackage arrangement over the Cincinnati, Hamilton and Dayton Railway. The Ivorydale plant is connected with these roads by railway tracks owned by complainant, but operated under the name of the Ivorydale and Mill Creek Valley Railway Company, a corporation. This railway, which comprises about 6 miles of track, also connects
83 the different factory buildings, and besides carrying property between the above-mentioned railway lines and the factories is used for conveying fuel, material, and products to and from different parts of the plant. Under a contract dated December 26, 1895, and effective January 1, 1896, the Ivorydale and Mill Creek Valley Railway Company receives from the defendants, the Cincinnati, Hamilton and Dayton Railway Company; Baltimore and Ohio Southwestern Railway Company; and the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and from the Erie Railroad Company 1½ cents per 100 pounds on outbound business to points in trunk-line territory, and 2 cents per 100 pounds on outbound business to points west of trunk-line territory. On the inbound business the Ivorydale and Mill Creek Valley Railway Company receives for carloads of 20,000 pounds or over $2,50 per car (except on coal, upon which it obtains $1 per car), provided the traffic furnishes the other carriers parties to the contract any revenue outside of certain switching charges which are fixed by the contract as follows: Between Ivorydale and Cincinnati (about 7 miles) $3 per car of 40,000 pounds or less, and 1 cent per 100 pounds over 40,000 pounds; between Cincinnati depots and Ivorydale $4 per car of 40,000 pounds, and 1 cent per 100 pounds over 40,000 pounds. Coal from Cincinnati proper (Baltimore and Ohio Southwestern, Ohio division; Cleveland, Cincinnati, Chicago and St. Louis; and

Cincinnati, Hamilton and Dayton tracks) is carried at 20 cents per ton, but when coal is loaded at elevators on Baltimore and Ohio Southwestern, Mississippi division tracks, the switching charge for that service is additional. These established switching charges are divided between the Ivorydale and Mill Creek Valley Railway Company and the other railways, so that the former receives 50 cents per car and the remainder goes to the connecting railways. The Ivorydale and Mill Creek Valley Railway Company agrees to give to the connecting roads all of its outbound business to all territory north of the Ohio and west of the Mississippi River and along the line of the Baltimore and Ohio Railroad, with the exception of the State of Arkansas, that they can handle via their own rails and connections, paying therefor full established rates as published from time to time. The agreement may be terminated upon ten days' notice by any party. The division between trunk-line territory and territory west thereof is marked approximately by a line drawn from Toronto, Ontario, through Buffalo, N. Y., and Pittsburg, Pa., to Charleston, W. Va. The amounts stated in the contract are allowed to the Ivorydale and Mill Creek Valley Railway Company for terminal services, which include the hauls to and from the points of connection with the defendant roads, the loading and unloading of the freight, storage, and in fact everything connected with the inbound and outbound service, except the billing, which is done by employees of the connecting railway companies at Ivorydale in quarters furnished by complainant. For the year ending June 30, 1900, the gross earnings of the Ivorydale and Mill Creek Valley Railway Company were $56,007; operating expenses, $35,813; net earnings, $20,194. The capital stock of the company is $100,000, or $16,667 per mile of line. It has no bonded debt. The earnings show very large returns upon the capital invested, and it seems to be conceded that the operation of this terminal railway is highly profitable to complainant. This results, of course, mainly from the abovementioned advantageous contract with the connecting lines. Under this contract liberal arbitrary rates and charges are secured by the Ivorydale and Mill Creek Valley Railway Company when applied to the whole of complainant's shipping business, which amounted in the aggregate in 1899 to 10,483 cars. The testimony indicates that this contract with complainant's Ivorydale and Millcreek Valley Railway Company was made by the defendant roads at Cincinnati with a view of avoiding rate cutting by each other. In a brief filed for the Baltimore and Ohio system it is stated that the contract is "a *modus vivendi* for the railroads with refernce to the Proctor & Gamble business;" that "without it or some similar arrangement the railroad companies would be cutting each other's throat for the traffic;" that "it is a price paid to the Procter & Gamble Company by the railroads to insure a distribution of the business impartially among the other lines at Ivorydale." The division of this business among the defendant lines is controlled by complainant's traffic manager, Mr. McDonald, who is also general manager of the Ivorydale and Millcreek Valley Railway Company. Although the contract is claimed by defendants to be an extravagant arrangement and one which is practically continuous, because necessary to prevent the

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competing defendant railways from cutting the rates, it is nevertheless terminable at the option of any party upon ten days' notice. The defendants reaching Ivorydale by acting in concert could unquestionably secure a reduction of the allowances now made to the Ivorydale and Millcreek Valley Railway Company and reestablish the *modus vivendi* upon a lower basis of cost if they found or believed that the present allowances to that company are unwarranted. Upon the point whether such allowances are in fact too liberal the evidence is insufficient, considering all of the services rendered by complainant or the Ivorydale and Millcreek Valley Railway Company, and we limit our finding in that respect to saying, as stated above, that the income of the Ivorydale and Millcreek Valley Railway Cimpany clearly affords very large returns upon the capital invested.

If this case solely affected the interests of the complainant and defendants it might be necessary to further determine and state the result of this contract, but as the general question involved is the propriety of the classification of soap and rates thereon in Official Classification territory as adopted by the defendants and other
85 carriers, and as affecting soap manufacturers and soap traffic generally in that territory, the essential questions of fact are those pertaining to the reasonableness and justice of placing soap in fifth class, instead of sixth, for carloads and in 20 per cent. less than third class, instead of fourth class, for less than carloads, and these matters are certainly not controlled by any special advantage accruing to complainant from this contract or in other respects. The defendants have apparently taken the contrary view and given particular attention in their testimony to the profits and generally prosperous condition of the complainant, and it is true that the defendants herein are those largely used by complainant in its business, while many carriers other than these defendants are engaged in the carriage of soap for numerous other manufacturers of that commodity in Official Classification territory. The ultimate question in the case, however, is the legality of the present classification of soap and the resulting rates on that traffic, not only from the standpoint of complainant but that of all other soap producers affected by such classification, and necessarily the great mass of testimony in the case has been considered with reference to the determination of that question.

11. The characteristics of soap as a desirable article of traffic for the carriers were succinctly found and stated by the Commission in its former decision as follows:

"Common soap is packed in convenient form for handling by carriers, and it is heavy, compact, and not bulky in proportion to weight, in comparison with other grocery articles; its liability to damage is very slight; the risk is very light in case of wreck of train; a car can easily be filled with soap to its full capacity; it does not deteriorate in transportation; it furnishes a very large volume of traffic, as indicated by the amount manufactured; the material for its production is brought together from many parts of the country, and the soap is distributed everywhere, which indicates the length of haul to which it is subject; its distribution by railroads is as general as its use by

ndividuals; as the latter universally participate in its use, the former nust as generally engage in its transportation; it is not tainted by offensive odors of other articles or filth of cars, and can therefore be ransported in some cars that would be unfit for many grocery rticles; it does not soil a car or affect other freight." The fifth class ontains few, if any, more desirable articles than soap in point of onvenience in handling and loading, and in this respect it is fully qual to package freight of any class. Some heavy commodities, uch as iron and steel articles, and perhaps some other kinds, may oad heavier, and barreled freight may be rolled and is therefore omewhat easier to handle, but considered with reference to freight enerally, soap ranks well up with the heavier and less bulky articles s traffic adapted to load large weight in small space, and therefore produce relatively greater returns to the carrier.

36 12. The volume of the soap traffic is also very considerable. While no statistics are given showing even approximately he aggregate amount offered for carriage, it does appear that about 1,000,000,000 pounds of soap, equal to 500,000 tons, are annually produced in the United States, and of this tonnage much more than half is apparently produced in Official Classification territory. This estimate is based upon the fact that there are but few large distributing soap factories in Southern Classification territory, which lies south of the Ohio and Potomac rivers and east of the Mississippi, and soap factories of that description in Western Classification territory are understood to be mostly located on and east of the Missouri River. The numerous smaller and partly local factories must, however, produce a very considerable part of the aggregate yearly output, and of course much of this is delivered to customers from the factory. To that extent the amount of tonnage by rail is reduced. Of the total tonnage produced the complainant manufactures and ships about one-tenth, or 50,000 tons, equal at the carriers' prescribed minimum weight of 30,000 pounds per car of 3,333 1/3 cars. The box or package would increase the total weight about 11 per cent. Complainant's carload freight averages more than such prescribed carload minimum, and runs up to 40,000 and sometimes to over 50,000 pounds, even in some instances exceeding the marked weight capacity of the cars; but as a rule the loading has been considerably under the marked car capacity, and the average seems to be somewhere between 30,000 and 40,000 pounds. On the other hand 35 per cent. of complainant's traffic for a given year was in less than carloads, and this involves the use of a greater number of cars than would be the case if the traffic was all in carloads. The volume of the soap traffic is less than that of canned goods and sugar, both of which are in fifth class, and it is small as compared with that of hay and numerous other articles now in the fifth and sixth classes. On the other hand, it is greater than that of many other articles in either the fifth or sixth class. A table prepared in our division of statistics gives tonnage figures the totals of which were published in the Statistical Report on Railways in the United States for the year ending June 30, 1900. From this table the railway tonnage of different

descriptions of traffic in Official Classification territory is taken as follows:

Products of agriculture.—Articles taking rates below sixth class: Grain, 7,359,447 tons; flour, 2,321,884 tons; other meal products 1,798,926 tons. Articles taking fifth-class rates: Hay, 2,485,149 tons. Articles taking fifth-class rates or higher: Fruit and vegetables, 3,026,615 tons. Articles taking fourth-class or higher rates: Tobacco, 296,843 tons; cotton (which also moves at lower commodity rates), 127,848 tons. Articles taking various class rates: Other products of agriculture, 650,528 tons.

87 *Products of animals.*—Articles commonly taking fifth-class rates: Dressed meats, 825,536 tons; other packing-house products, 1,055,276 tons. Articles taking fifth-class or higher rates: Hides and leather (leather usually fourth-class or higher), 513,175 tons. Articles taking special tariff rates: Live stock, 2,237,620 tons. Articles taking various class rates: Other products of animals, 970,962 tons.

Products of mines.—While ores, stone, and sand are in the sixth class, they frequently take lower commodity rates, as do other products of mines, including coal and coke. Anthracite coal, 51,291,160 tons. Bituminous coal, 78,396,036 tons. Coke, 14,390,827 tons. Ores, 5,202,064 tons. Stone, sand, etc., 20,776,791 tons. Other products of mines, 1,265,772 tons.

Products of forest.—These products while nominally in sixth class nearly all often take lower commodity rates. Lumber, 15,720,404 tons. Other products of forests, 6,922,020 tons.

Manufactures.—Articles usually taking fifth-class or higher commodity rates: Petroleum and other oils, 2,650,760 tons. Articles taking fifth-class rates: Sugar, 1,311,382 tons. Articles taking fifth and sixth class rates: Naval stores, including rosin in sixth class and turpentine and wood in fifth, 90,195 tons. Articles usually taking sixth-class or lower rates: Iron, pig and bloom, 8,651,074 tons. Iron and steel rails, 1,839,763 tons. Cement, brick, and lime, 9,254,383 tons. Articles usually taking fifth class or higher: Castings and machinery, 5,980,335 tons. Bar and sheet metal, 6,817,715 tons. Agricultural implements, 582,339 tons. Wines, liquors, and beers, 1,128,350 tons. Articles taking various class rates: Household goods and furniture, 696,662 tons. Wagons, carriages, tools, etc., 450,144 tons. Other manufactures, 9,293,604 tons.

Merchandise.—Articles taking various class rates, usually fifth class or higher, 12,146,648 tons.

Miscellaneous commodities.—Articles taking various class rates, 15,913,896 tons.

It will be observed from the foregoing that the articles carried in greatest volume usually take relatively lower rates, though some commodities moving in comparatively small volume take lower rates because of low value, small trade margins in proportion to value, or on account of other controlling commercial conditions. There are also certain inherent characteristics of different kinds of traffic which apparently indicate their classification in classes lower than are given to other commodities. Thus, cement, brick, and lime, in sixth class

lower, apparently should and do take a lower class than manufactured iron articles; and all raw products of the farm, forest, and mine should commonly take lower rates than manufactured articles. Illustrations of this character might be carried on down through the whole list as above divided under general heads. The system of this classification appears to be to group all articles of the same general character in one class, though of course there are some exceptions, such, for instance, as hay, a raw agricultural product, which is now in fifth instead of sixth class. There is plainly nothing in the volume or in the general characteristic of soap to entitle it to be classed lower in carloads than sugar, cheap iron articles, pipe and sheet metal, canned goods, or other general merchandise usually in the fifth or a higher class. Articles in all of the different classes differ widely in respect of value, and this must necessarily occur in a classification having only six classes, or indeed in any small number of classes.

13. Complainant's common soaps sell from 1¾ to 3 3/5 cents per pound, and the average selling price of all soap is estimated in the record at about 3¾ cents per pound. The wholesale prices in Cincinnati of various other fifth-class commodities in carloads were put in evidence as follows: Apples, dried, 1½ to 5 cents per pound; bicarbonate of sola, 1 cent per pound; glucose, 1 7/10 cents per pound; lard oil, 40 to 56 cents per gallon; fish oil 3¾ cents per pound; cottonseed oil, 5½ cents per pound; linseed oil 8¾ cents per pound; rosin, 1 cent per pound; tallow, 6 cents per pound; paraffin wax, 6 to 10 cents per pound; laundry starch, 3¼ cents per pound; pearl starch, for sizing, 1¾ cents per pound; grape sugar, 2 to 3 cents per pound; sugar, 3 to 5 8/10 cents per pound; turpentine, 3 6/10 cents per pound; clover seed, 7½ to 9 cents per pound; timothy seed, 2¼ to 3 cents per pound; redtop seed, ordinary, 2½ to 4 cents per pound; redtop seed, heavy, 7 to 8 cents per pound; orchard grass seed, 7 to 9 cents per pound; blue grass seed, 6 to 7 cents per pound; binder twine, 9¾ cents per pound; cotton bags, 12 to 15 cents per pound; burlap bags, 7¼ cents per pound; coffee, 8 1/3 to 16 cents per pound; canned fruits and vegetables, $1.50 to $2.50 per 2 dozen cases, weighing 25, 42, and 68 pounds.

Starch takes a commodity rate below fifth class, and that is perhaps true over some lines as to one or more of the other commodities in the list just given. The value or selling price of soap is higher than that of some articles and lower than that of others named in the list.

14. About 300 items or articles are contained in the sixth class of the Official Classification. These include coarse chemicals, minerals, ores, building and paving brick and stone, tile, lumber, and cheap wooden articles, grindstones, ice, rosin, flour, grain and grain products, in carloads. Many of these, particularly grain, flour, and other grain products, and often lumber and low-grade wooden articles, are given lower commodity rates for carloads. Probably 200 or less articles in the sixth class are commonly carried in carloads at the sixth-class rates. These articles are not similar to soap in character or use, and they are generally of less value than soap.

89 The following-named grain products, nominally in the sixth class, are given commodity carload rates by the carriers as low as those fixed for grain:

Avena.	Flour.	Mill feed.
Bran.	Frumentum.	Oat hulls.
Brewers' dried grain.	Germos.	Oatmeal.
Brewers' meal.	Glucose feed.	Oil cake.
Buckwheat flour.	Gluton meal.	Oil meal.
California breakfast food.	Grits.	Pearl barley.
Cerealine.	Groats.	Pearl wheat.
Corn flour.	Ground corn.	Quick malt.
Corn meal.	Healthall.	Rolled oats.
Cotton-seed cake.	Hominy.	Rolled wheat.
Cotton-seed hulls.	Hulled corn.	Rye flour.
Cotton-seed meal.	Kafir corn meal.	Screenings.
Cracked corn.	Maizeline.	Ship stuff.
Cracked wheat.	Maizone.	Shorts.
Cream of maize.	Malt.	Sprouted barley.
Distillers' dried slop.	Malt silver flake.	Starch.
Farina.	Malt skimmings.	Vitos.
Farinose.	Malt sprouts.	
Flake malt.	Middlings.	

Starch, which is in the fifth class, usually takes, as above stated, lower carload rates than those fixed for that class, and generally the grain rate. These are all given lower commodity rates because they are made from grain—starch chiefly from corn, and most of the other products from wheat and corn. The milling industry is carried on not only in the West, near to the great grain fields, but also largely in the East, and it is claimed by defendants that low rates are necessary upon all of these products as well as upon flour and other staple cereal foods. Rice, which is also usually given the grain rate, is a foreign as well as domestic product, and may be imported into this country through any gateway. It competes for sale with the various cereal foods. Soap is fully as desirable to the roads as an article of traffic as starch and many of the higher grades of cereal foods, and probably also as compared with rice, but not so much so as flour. The total volume or tonnage of flour is much greater than that of soap, and the same is true of other staple mill products as a whole. While the necessity for rates as low as those on grain for the finer grades of cereal products and for starch and rice may be open to question, it has been the long-standing practice of the carriers to accord commodity rates to such articles.

90 15. The following-named commodities were changed by the carriers on January 1, 1900, from sixth to fifth class:

Articles.	Minimum weight.	Articles.	Minimum weight.
Actinolite ore, ground, in bags	30,000	Oxide of iron, in kegs, barrels, or casks	30,000
Barrels, casks, and tierces, n. o. s., new or old	16,000	Paints, earth, iron, metallic	30,000
Basket material, n. o. s.	24,000	Pease, dried, coarse, in bulk	30,000
Blue vitr-ol	30,000	Pea hulls	24,000
Brewers' chips or shavings	24,000	Peat or peat moss	24,000
Carriers, ale, beer, beer tonic, or porter	20,000	Pitch, n. o. s.	30,000
Cement, asbestos, boiler covering, and magnesia	30,000	Scrap, rubber	30,000
Cloth boards, wooden	24,000	Sea grass, pressed in bales	20,000
Cocoanut husks	24,000	Soap, soft soap, soap extracts, powders, tablets, soapstone	30,000
Cocoanut-skin shavings or refuse	24,000	Starch, in sacks, boxes, or barrels—ground, in barrels	30,000
Coffee, in single or double bags	30,000	Straw, n. o. s., pressed in bales	20,000
Coffee, ground or roasted	24,000	Sugar, n. o. s., in boxes, bags, barrels, or half barrels	30,000
Copperas	30,000	Sulphate of iron	30,000
Corncobs and husks	20,000	Shavings, wood, in bales	20,000
Corrosive pots	30,000	Shavings, wood, in bulk	20,000
Cotton-seed hulls or motes	30,000	Tar, coal, and coke, in barrels	30,000
Creosote, in wood	30,000	Tar, coal, and coke, in tank cars	Capacity of car.
Fish, smoked, pickled, or salted	30,000	Tobacco stems and fertilizer	24,000
Flour, potato, in sacks or barrels	30,000	Turpentine, in tank cars	Capacity of car.
Glauber salts, in barrels	30,000	Vinegar chips or shavings	24,000
Hay, pressed in bales	20,000	Washing powder, dry, in packages	30,000
Jute butts	30,000		
Mortar stains or colors	30,000		
Moss, nursery and peat	24,000		
Oil, creosote, in wood	30,000		
Oil, creosote and pine, in tank cars	Capacity of car.		

This list contains coffee, sugar, and smoked or salted fish as formerly in the sixth class, and which were compared with soap in our decision of the former Procter & Gamble cases. The present sixth class embraces no prominent general merchandise article except grain and the cereal products above mentioned, coarse dried pease, which were restored to sixth class in 1900, cheap lumber products, lime, rosin, salt, sal soda and other coarse chemicals, cotton seed, flax seed, and wagon material such as felloes, hub blocks, shafts, and spokes. Besides dried pease above mentioned the following articles were afterwards restored to the sixth class in the Official Classification: Carriers, ale, beer, beer tonic, and porter; shavings, wood, in bales or bulk; tobacco fertilizers compressed in bales or sacks, and tobacco stems in bales.

16. The fifth class of the Official Classification contains over 2,000 articles and includes soap and many other grocery articles, such as canned fruits and vegetables, candles, cabbage, pickles, potatoes, pumpkins, parsips, squash and turnips, chicory, citron, lemon and orange peel, desiccated cocoanut, coffee, fruit butters, jelly, sauce, soap and washing powders, macaroni, vermicelli, flour paste, mustard, olives (pickle or brine), soups and broths, sugar, sirup, and tapioca. Numerous other articles sold by grocers or in general stores are also in the fifth or higher classes.

Although soap is most desirable traffic for the carriers, it is not a species of traffic which, like hay or grain, moves in very large aggregate quantities, nor is it so low in value as to call for the
91 lowest class rating on that account. It is a widely manufactured article sold with other general merchandise, and, unlike the principal food staples which move in greatest volume from the West to the East, it is shipped from the factory in all directions

and meets the products of other factories in all markets. The soaps of New York and Chicago manufacturers sell in Cincinnati in competition with complainant's products, and the latter in turn are sold in Chicago as well as New York and other extreme eastern cities and towns. This condition is more or less common to other general merchandise articles which are produced in various parts of Official Classification territory. Without some showing of discrimination against soap in its classification as compared with other articles of the same general character, or any special distinction appearing in favor of soap in either volume, value or controlling commercial considerations, we are unable to find simply because it is a desirable article of traffic for the railroads in the matter of earnings and ease of handling that it is unjust to retain it in class 5 with other articles of like character, some of which are equally as attractive as soap from the standpoint of car revenue. Moreover, the fact that one article loads heavier than another does not determine the question of greater aggregate or net revenue, which requires that tonnage shall also be taken into account. Complainant's annual soap traffic of, say, 50,000 tons, is unquestionably particularly desirable because of its concentration at a single point of shipment, but the entire soap tonnage in Official Classification territory is not exceptionally large as compared with that shown for numerous other descriptions of traffic.

17. In Official Classification territory class rates generally are, as before found, practically the same to-day as they were in 1887, the changes made having been by changes in the classification or by making, changing, or canceling commodity rates. During that period the tendency of rates on classified articles has been to advance through changes in the classification and to reduce on articles in the commodity list. This is not intended to mean that no classified articles have been reduced. There have been frequent reductions as well as advances in both the classification and in commodity rates, but the net results appear to be as stated. Besides the increased rating of soap, the classification of January 1, 1900, also advanced a large number of other articles in both carloads and less than carloads, and there were at the same time numerous cancellations of commodity rates. Some commodity rates were afterwards restored or reduced, but to what extent is not shown. It does appear, however, that about 818 articles were advanced to higher classes on that date; that on March 10, 1900, certain articles were somewhat reduced from the basis fixed on January 1, and that these net advances were made
and have since been enforced by the carriers for the purpose
92 of securing greater revenue. Several tables were put in evidence by defendants and much testimony was given on their behalf to show greatly increased cost in railway construction and maintenance and also in the price of railway labor. About the year 1899 the cost of railroad material had increased considerably over the prices which prevailed in the years 1893 to 1897. Steel rails had become much more expensive and the cost of cars and locomotives had materially advanced. Since the early part of 1900 the cost of rails and some other articles used in railway construction and

equipment has both increased and again decreased to some extent. The wages paid to railway labor have also been materially advanced since the panic years in the last decade, and the number of employees is much greater than it was in that period.

These advanced prices for railroad material and greater cost of railway operation were largely if not fully offset by the increase in traffic which set in strongly during the year 1899, and which has continued in practically undiminished if not greater volume. During most of the time since about the middle of that year the traffic coming to carriers generally in Official Classification territory has been so great as to require the use of all their equipment, and at different periods these carriers have been unable to promptly move the freight offered for transportation. Whatever need for greater revenue may have appeared to the carriers in that territory to exist before the advance in classification and rates in January, 1900, in order to secure the net earnings or profits which they, taking them together, obtained prior to June 30, 1893, has been mainly removed by the augmented revenue from increased volume of business; for, if the roads in Official Classification territory had made no advance in classification in January, 1900, their aggregate earnings would, we think it safe to say, have equaled if not exceeded in 1900 or 1901 those they received in the most prosperous previous year. This plainly appears from reports of mileage and earnings in the aggregate and per mile of line of railways in Official Classification territory. The average net earnings per mile of line in this territory, Groups I, II, and III, for the years ending June 30, 1890 to 1898, inclusive, was $3,539; for the year ending on the same date in 1899 it was $3,643; for the fiscal year ending June 30, 1900, it was $4,217, and for 1901, $4,343. The fiscal year of greatest aggregate net earnings in Official Classification territory prior to 1899 was 1893, when such earnings amounted in Groups I, II, and III to $185,691,581. In 1899 they were $192,784,813; in 1900 they were $225,694,310; and in 1901, $233,557,308. These greatly increased net earnings have not wholly resulted from increased business. Economies in operation from the use of larger and heavier equipment, both cars and engines, and improved roadbeds, amounting
93 almost to reconstruction in some instances, have been and are still being effected, and these are permanent improvements which will continue to promote the net earnings of the carriers.

It is not deemed necessary for the purposes of this case to make detailed findings in regard to the financial condition of the several defendant lines. The classification change complained of was adopted and has since been enforced by practically all railroad carriers in Official Classification territory, for the declared purpose of benefiting all such carriers through resulting increase of revenue; and, as above stated, the main question here presented is whether the higher classification of soap is just and reasonable as applied not only to complainant's business, but to that of all other soap manufacturers and shippers in the section in which this classification is enforced. It seems sufficient to say on this point that, compared with roads generally throughout the United States, the defendants are in

fair to excellent financial condition, and most of them extremely prosperous.

18. Tested by recognized principles of freight classification, we are unable to find that soap in carloads is in fact unjustly or unreasonably placed in class 5 of the classification as in effect since January 1, 1900; but the questions perhaps remains whether, independently of classification, the advanced rates resulting from the change of classification are unreasonable. If soap only had been advanced from sixth to fifth class, or even if the articles with which soap was compared in our former decision had been retained in the sixth class, there would be a more satisfactory basis of comparison and inference. As it is, no proper comparison can be made which sustains complainant's contention, nor is there such a showing of diminished profits to soap manufacturers on account of the freight rate, or because of the increased price of raw materials used in soap manufacture, in view of the decided advance made by such manufacturers in the price of soap about January 1, 1900, as to indicate a commercial condition requiring rate reductions on carload shipments. There is no evidence of any increase in price to consumers, and beyond the 15 to 25 cent advance in the price per box to jobbers, which the soap manufacturers say was made on account of higher raw material, there is no showing of increased price to them. The profits of the manufacturers have not been gone into in minute detail, but enough appears to satisfy us that the increased rate on carloads has not unduly injured them, considering such increase by itself or as connected with the higher cost of manufacture. The soap manufacturers have established the fact of considerable advance in the price of raw material, and the carriers have also established the fact of large advances in the prices of their supplies and of increased cost of operation. We have found that the carriers, taking them as a whole in this classification territory, made these advances in freight rates in a time of unusual prosperity, and that they would prob-
94 ably have secured net earnings without such advances equal to those obtained in any previous year; but we have also found that soap is properly in fifth class while various other merchandise articles now in that class are charged fifth-class rates, and we can not assume that such other fifth-class articles of merchandise, or that all of those articles which were advanced from sixth to fifth class on January 1, 1900, are now carried by these roads at unreasonable rates. The advances made by the carriers in carload rates on January 1, 1900, taking all such advances together, may have been unreasonable, but there is nothing to warrant a finding nor any basis for inference that some at least of such advances were not reasonable.

In a case involving the reasonableness of rates on hay as well as the classification of that article, which has recently been decided by the Commission, we found that hay had always been in the sixth class. Soap has not, except under the compulsion of our order in the former Procter & Gamble cases. Moreover, hay is a raw agricultural product and one of the staple articles which move in great volume from the West to the East, and should always be carried at rates which yield only moderate profits to the carrier. Soap is an article of general merchandise, manufactured in numerous parts of

this territory, moving freely therein in all directions under strong competition between different manufacturers, and consumers are therefore not dependent upon any particular source of supply. The cost of sending soap to the jobber or direct to the retailer, if so shipped, is a small percentage of its selling value, while the cost of transporting hay constitutes a large part of its price in the markets of consumption. This comparison of soap with hay is intended solely to mark the difference between the two cases upon the question of the reasonableness of the rates. The testimony in this case as in that of hay was chiefly directed to the justice of the classification, and while in the hay case we found the rate unreasonable as well as the classification unjust, in this case the classification for carloads does not appear to be unjust, and there are no sufficient grounds for finding that the rates on carload soap are unreasonable.

19. The less than carload classification and rates on soap require separate treatment. Soap in less than carloads was fourth class in the first Official Classification and had relatively the same rates in the years prior to 1887, the year when the first Official Classification was issued. At the same time carload soap was in the fifth class of the classification, and it had about the same relative rates prior to 1887. The fourth class for less than carloads and fifth class for carloads continued up to June, 1891, when in consequence of our order in the Procter & Gamble cases soap was reduced to sixth class for carloads. Those proceedings did not affect the less than carload classification, and soap in less than carloads remained in fourth
95 class up to January 1, 1900. Less than carload lots of soap were therefore always voluntarily placed in the fourth class by the carriers until the date last mentioned, as well when carload soap was fifth class as when it was sixth class freight. On January 1, 1900, the less than carload rating was raised to third class, and on March 10 reduced to 20 per cent less than third class, but not to be lower than fourth class. The difference between sixth and fourth class, based on Chicago-New York rates, is 10 cents. The difference between fifth and fourth class on the same rate basis is 5 cents. Such difference of 10 cents is 40 per cent. of the sixth-class rate, and the difference of 5 cents is 16 2/3 per cent. of the fifth-class rate. The difference between the fifth and third class rate is 20 cents on the Chicago-New York basis, and such difference is 66 2/3 per cent. of the fifth class or carload rate. Twenty per cent. less than third class for less than carloads reduces the Chicago-New York rate to 40 cents and makes the difference between that rate and the fifth-class rate 10 cents, or 33 1/3 per cent. of the fifth-class carload rate.

A large number of articles in Official Classification territory are fourth class in less than carloads and fifth class in carloads. These include chemicals, numerous iron and steel articles, sirup, tin plate, tar, some lead articles, cattle guards, paints, horseshoes, hides, beans and pease (dried, in bags), and various other articles. Coarse dried pease have also a sixth-class carload rating as before found. Again, using Chicago-New York rates for illustration, the same difference—5 cents—exists between the fifth and sixth classes, and the less than carload rating for all cereal products, which are nominally in sixth class carloads, is fifth class. The present less than carload rating of

20 per cent. less than third class is, however, applied to numerous articles which take fifth class in carloads, among them coffee, sugar, fish (smoked or canned), and canned fruits and vegetables. As before stated, carload and less than carload quantities of soap in the Western Classification are in the fifth and fourth classes, respectively, and under the Southern Classification soap is in the sixth class for any quantity.

Besides involving the payment of higher rates for less than carload shipments, the change to 20 per cent. less than third class but not less than fourth class has brought about rate relations different from those previously existing between complainant and other shippers of soap in Official Classification territory. Using Cincinnati and New York City for illustration, the following results are produced: A shipper located at New York City can ship therefrom to practically all points in New England and a large number in New York State without paying higher than fourth-class rates. On the other hand, a shipper located at Cincinnati can not ship northerly or northwesterly therefrom more than about 60 miles without
96 paying an advance over fourth-class rates. Some idea of the extent of the advances over fourth-class rates on shipments from Cincinnati and New York City, respectively, is afforded by the rate and distance tables given below:

From Cincinnati to—	Distance in miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
Guilford, Ind.	28	10½	12	1½
Dayton, Ohio	59	10	10	0
Harshman, Ohio	60	10	10½	½
Johnson, Ohio	67	11½	14	2½
Tippecanoe, Ohio.	75	11½	14	2½
Indianapolis, Ind.	111	15½	15½	0
Portsmouth, Ohio.	106	12	12	0
Columbus, Ohio.	116	12½	15½	3
Lima, Ohio.	132	13	16	3
Ottawa, Ohio	151	14	17½	3½
Detroit, Mich.	163	16½	19½	3
Terre Haute, Ind.	183	14½	18	3½
Vincennes, Ind.	192	15	18½	3½
Lyons, Ind.	193	10½	12	1½
Paris, Ill.	205	15	18½	3½
Bridgeport, Ill.	205	16	18½	2½
Xenia, Ill.	253	17	20	3
Wheeling, W. Va.	258	17	20	3
Cleveland, Ohio	263	16	18½	3½
Pana, Ill.	278	17	20	3
Chicago, Ill.	294	17	20	3
Pittsburg, Pa.	313	18	21	3
Peoria, Ill.	323	17	20	3
East St. Louis, Ill.	339	17	20	3

From New York City to—	Distance in miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
Erie Railroad.				
Otisville, N. Y.	76	14	15	1
Port Jervis, N. Y.	88	14	15	1
Lackawaxen, Pa.	111	15	16	1
Cobocton, N. Y.	131	15	16	1
Lordville, N. Y.	153	17	18	1
Deposit, N. Y.	177	17	18	1
Delaware, Lackawanna and Western Railroad.				
Boonton, N. J.	30	10	10	0
Bridgeville, N. J.	75	14	15	1
Stroudsburg, Pa.	92	15	16	1
Gouldsboro, Pa.	123	17	18	1
Scranton, Pa.	145	17	18	1
Foster, Pa.	172	17	18	1
Central Railroad of New Jersey.				
Elizabeth, N. J.	13	7	7	0
Bound Brook, N. J.	31	9	10	1
Red Bank, N. J.	39	10	10	0
High Bridge, N. J.	53	12	13	1
Easton, Pa.	74	14	14	0
Bridgeton, N. J.	134	18	18	0
Bayside, N. J.	144	18	18	0
New York Central and Hudson River Railroad.				
Tarrytown, N. Y.	25	9	9	0
Garrison, N. Y.	50	10	10	0
Poughkeepsie, N. Y.	74	11	11	0
Tivoli, N. Y.	99	12	12	0
Stuyvesant, N. Y.	124	13	13	0
Albany, N. Y.	143	13	13	0
New York, Ontario and Western Railroad.				
Mechanicstown, N. Y.	75	13	14	1
Ellensville, N. Y.	101	14	16	2
Parksville, N. Y.	124	17	18	1
East Branch, N. Y.	150	17	18	1
Walton, N. Y.	179	18	20	2
Sidney, N. Y.	201	18	20	2
Lehigh Valley Railroad.				
Elizabeth, N. J.	13	6	6	0
Bound Brook, N. J.	33	9	10	1
Flemington Junction, N. J.	51	12	12	0
Bethlehem, Pa.	89	14	14	0
Allentown, Pa.	93	14½	14½	0
Slatington, Pa.	110	14½	16	1½
Manchchunk, Pa.	122	16	17	1
White Haven, Pa.	146	17	18	1
Wilkesbarre, Pa.	176	17	18	1

From New York City to—	Distance in miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
Pennsylvania Railroad.				
Elizabeth, N. J.	14	8	8	0
Philadelphia, Pa	92	12	12	0
Wilmington, Del.	117	18	18	0
Newark Center, Del.	130	17	18	1
Perryville, Md.	150	19	20	1
Baltimore, Md.	187	18	18	0
Washington, D. C.	228	21	22	1
New York, New Haven and Hartford Railroad.				
Port Chester, N. Y.	29	7	7	0
Fairfield, Conn.	54	8	8	0
New Haven, Conn.	76	10	10	0
Springfield, Mass.	138	12	12	0
Worcester, Mass.	198	18	18	0
Boston, Mass.	215	16	16	0
Lowell, Mass.	243	22	22	0
Boston and Maine Railroad.				
Greenfield, Mass	171	15	15	0
North Adams, Mass.	209	15	15	0
Boston, Mass.	233	16	16	0
Nashua, N. H.	272	20	20	0
Portsmouth, N. H.	290	23	23	0
Rochester, N. H.	313	23	23	0
Portland, Me.	348	23	23	0

The fourth-class rate from Cincinnati to Boston is 34½ cents, and a 20 per cent. less than third-class rate between the same points is 38½ cents, indicating an increase of 4 cents in the less than carload rate from Cincinnati to Boston. The rate from New York to Boston is 19 cents, fourth class, and 20 per cent. less than third class, but not below fourth class; also gives a rate of 19 cents, showing no advantage over fourth class from New York to Boston. These differences are due to variations in the scales of rates prevailing in the different sections. The 20 per cent. less than third-class rating for less than carloads applies to all shippers of less than carload lots of soap throughout the entire territory, but it increases some rates more than others, and leaves some as they were before it was adopted. When, for example, under the application of that rule the rate from Cincinnati to Boston is increased 4 cents and the rate from New York to Boston remains the same, as compared with the fourth-class rates formerly in effect, it is plain that this method of determining rates upon a percentage basis operates unequally upon the different shippers of less than carload quantities in that territory.

Official Classification No. 20 contained an elaborate rule providing for mixed carloads, and a similar but amended rule appears
98 in the present classification, which is No. 23. This is called "Rule 10" in the classification, and as given in No. 20 is substantially as follows:

"Rule 10 (A): When a number of different articles, except those covered by sections B (provisions) and C (dressed beef) of this rule, of the same class are shipped at one time by one shipper to one consignee and destination, in carloads, they shall be taken at the rate per 100 pounds for such class, in carloads, and at the highest minimum carload weight provided for either of the articles, actual weight to be charged for if greater than the minimum weight. If the articles (provided with L. C. L. and C. L. rating) are of more than one class, the carload rate and minimum carload weight for the articles in the highest class shall be charged on all the articles that make up the carload, actual weight to be charged for when in excess of the specified minimum weight, excepting as provided in sections B, C, and D of this rule and rule 7 (A); and also excepting that where the actual weight of the articles in any one class equals or exceeds the minimum carload weight provided therefor, such articles may be charged for at the minimum carload weight (actual weight if in excess of the minimum weight) and carload rate provided for same, and the other articles will be charged for at the L. C. L. class rate to which they belong.

"(B) When articles (except dressed beef and articles taking same rate as dressed beef—see section C of this rule) of a higher or lower class are loaded in a car containing not less than 15,000 pounds of meat—(except as provided for in rule 10 (D)—or other packing-house products taking fifth-class rate, in carloads, from one consignor to one consignee and destination, and the aggregate weight of the entire shipment is 30,000 pounds or more, the carload rate per 100 pounds applying on each article shall be charged. If such articles have no carload rating, then actual weight and class rate should apply on such articles. If the aggregate weight of the different articles does not equal the required minimum, sufficient weight shall be added to the fifth-clas articles to make up the deficiency; provided that in no case shall the minimum charge for the entire shipment be less than for 30,000 pounds at the fifth-class rate.

"(C) (This portion of the rule refers to mixed shipments of dressed beef, sheep, or hogs, and is not important in this connection.)

"(D) Where shipments of bulk meats and meats in packages, and other packing-house products taking fifth-class rate in carloads, from one consignor to one consignee and destination, are loaded in the same car, and the aggregate weight of the shipment is 30,000 pounds or more, the C. L. rate per 100 pounds applying upon each article shall be charged."

Supplement No. 12 to Official Classification No. 22 contains the following changes in rule 10:

Subdivision A of the rule remains unchanged.

99 Subdivision B-1 is changed to read as follows:

"When any one of the following specified articles are shipped by one shipper or owner at one time to one consignee and destination in either straight or mixed carloads, and the aggregate weight of the entire shipment is 28,000 pounds or more, the carload rate per 100 pounds applying on each article shall be charged:

"Beef packed, in barels or tierces; casings, sausage, beef in bar-

rels, one-quarter barrels, one-eighth barrels, one-eighth barrels crated or boxed; kegs, tubs, or pails crated or boxed; casings, sausage, hog, in barrels, one-quarter barrels, one-eighth barrels, one-eighth barrels crated or boxed; kegs, tubs, or pails crated or boxed; grease, n. o. s., in barrels or boxes; guts (beef or hog), in barrels, half barrels, tierces or casks; lard (except leaf lard); lard substitute, n. o. s.; liver, pickled, in barrels, tierces, or casks; meats, n. o.. s., boxed; meats, desiccated, in cans, boxed; meats, dried, n. o. s., in boxes, barrels, or casks; meats, dried, sliced, in paper boxes, packed in cases; meats potted, in cans, boxed; meats, potted, in glass or earthenware, boxed; meats, salted, boxed; meats, smoked (except tongue), in barrels, boxes, or casks; oil, oleo, in barrels or tierces; oil, tallow, in barrels or tierces; oil, red, in barrels or tierces; oil, lard, in barrels or tierces; oil, tanners', in barrels or tierces; pigs' feet, pickled; pigs' feet, packed; pork, pickled, in barrels or tierces; sausage, bologna or smoked, in barrels, boxes, kegs, casks, or baskets; sausage, canned; stearine, in barrels, tierces, or bags; tails, cattle or ox, edible, salted or dried, in boxes, barrels, or casks; tallow, in barrels or tierces; tongues, pickled, in barrels of tierces; tripe, pickled, in barrels, kegs, or kits."

Subdivision B-2 reads as follows:

"When any of the following specified articles are shipped with other articles taking fifth class, in carloads, by one shipper or owner, at one time, to one consignee and destination, and the aggregate weight of the entire shipment is 28,000 pounds or more, the carload rate for 100 pounds applying on each article shall be charged."

(Here follows a restatement of the articles mentioned above under subdivision B-1.)

The rule then goes on as follows:

"If the aggregate weight of the foregoing articles, including those taking fifth class in carloads, does not equal the required minimum of 28,000 pounds, sufficient weight at fifth-class rate shall be added to the weights thereof to make up the deficiency in weight. Any other articles loaded in the same car with those described above, including those taking fifth class in carloads, will be charged for at the less than carload rate authorized for such articles, and the weight thereof shall not be applied towards making up the required minimum weight of 28,000 pounds."

(Subdivision C is omitted.)

100 Subdivision D reads as follows:

"Where shipments of bulk meats and meats in packages and the articles specified in section B of this rule taking fifth-class rates in carloads are shipped by one packer or owner, at one time, to one consignee and destination, and are loaded in the same car, and the aggregate weight of the shipment is 28,000 pounds or more, the carload rate per 100 pounds applying upon each article shall be charged. If the actual weight of the bulk meats and meats in packages and the articles specified in section B taking fifth-class rate in carloads does not reach the prescribed minimum weight, sufficient weight shall be added to the actual weight of the bulk meats to make up the prescribed minimum weight of 28,000 pounds."

It is complained that under rule 10-A and its various subdivisions

wholesale grocers and meat packers are able, with soap in class 5, to ship less than carload quantities of soap with other articles of that class in aggregate quantities sufficient to make a full carload and thereby obtain the carload rate upon a less than carload lot of soap. Wholesale grocers can ship mixed carloads of fifth-class articles, including soap, under rule 10 (A), but it is not apparent how complainant is injured by the operation of the rule in that respect. Complainant is a manufacturer of soap and aims to supply the wholesale grocer or jobber with that commodity instead of competing with the jobber for the retail trade. The testimony is to the effect that complainant does not sell direct to retailers. There may, however, be some competition between complainant and large wholesalers in supplying small jobbers at various points, but it is difficult to perceive how that portion of the rule operates materially to the detriment of the soap manufacturer.

A different situation exists in the case of meat packers, who are permitted under subdivision B-2 of rule 10 to ship a mixed carload of provisions and other articles taking fifth-class rates, which of course includes soap. The manufacture of soap by meat packers from grease and tallow obtained from the slaughter of animals has come to be a branch of their business, and, as above shown, numerous products of the packing house take fifth-class rates. The meat packer who also manufactures soap is therefore in competition with the complainant and others who are mainly engaged in the production of this article. The complainant may also take advantage of rule 10 governing mixed carloads in the shipment of its products, a number of which, besides soap, also take fifth-class rates; but the character of the business is such that it can take advantage of the rule only to a limited extent. On the other hand the meat packer, who is constantly sending out quantities of provisions, may avail himself of the privilege to a very considerable degree. The packing houses do business largely through agencies or representatives at
101 numerous points in Official Classification territory, and this tends to increase the value of the mixed carload rule to that class of shippers. While this privilege to the meat packers may have a tendency to keep down the price of soap to dealers, it discriminates strongly against the manufacturer who is mainly engaged in manufacturing and selling soap.

A reduction to the old fourth-class rating for less than carloads would reduce materially, and often as much as one-half, this discrimination in favor of the meat packers who are competitors with complainant and others in the manufacture of soap, and such reduction to fourth-class rates for less than carloads, would, with the present fifth-class rating for carloads, be simply a return by defendants to the relation of rates as between carloads and less than carloads which they voluntarily maintained for a period of years prior to June, 1891. Whatever the effect of a percentage less than third class for less than carload shipments of other commodities taking that rating under the classification may be, it plainly works discrimination against complainant and other western shippers of soap in less than carload lots in favor of their competitors in the East, when the present situation is compared with that which existed

under the old fourth-class rating, and it increases to the extent it exceeds fourth-class rates, the advantage accruing to the packing houses from this mixed carload rule. The difference of 15 cents between fifth class and third class, which was in effect as between carload and less than carload shipments from January 1 to March 10, 1900, would plainly be excessive, and the present difference, which varies according to a given per cent. as applied to different scales of rates, appears to be inequitable and unjust, and the fact is so found.

Conclusions.

The issues in this case involve only questions of fact, and the conclusions to be announced are therefore indicated in the foregoing findings; but as this is the second decision we have been called upon to render in the matter of the classification of common soap in carloads in Official Classification territory, and as the facts shown in the present record appear to call for a different ruling from that made in the former cases, some further statement of views upon the more important features of this case than a simple announcement of our determination seems to be required.

It fully appears from the evidence now before us that the Procter & Gamble cases which were decided in favor of complainants in 1890 did not present all of the facts in relation to the net-weight practice, and that some considerations then bearing upon the classification of common soap in carloads have become of less importance. Freight classification is based upon the relations which commodities bear to each other in such respects as character, use, bulk, weight,
102 value, tonnage, or volume, risk, cost of carriage, ease of handling and controlling conditions caused by competition. The sixth-class articles with which soap was compared in the former decision are now in fifth class, except flour, grain, and salt. Starch, though nominally in fifth class, takes commodity rates for the same general reason that grain products take commodity rates, namely, because they are all manufactured from grain. While it may be that starch is actually rated too low by the carriers and that the same is true of the finer grades of grain products, it does not necessarily follow that soap in fifth class is rated too high when such traffic as canned goods, coffee, sugar, cheap iron articles, and many other common grocery or merchandise articles are also in fifth class. Soap differs so materially from flour, grain, or salt, that it can hardly be said to have any significant analogy with either of them in a traffic or commercial sense. No comparison therefore of much value can now be made as between soap and the sixth-class articles used for that purpose in the decision of 1890, for such articles have either been advanced to fifth class or are noticeably dissimilar from soap in essential characteristics.

The practice of shipping carload soap at net weights—that is, by paying freight charges only on the weight of the soap and not upon the box in which it is packed—appears to have been a main, if not the chief, ground for the former ruling; and in the cases then

decided there seems to have been little evidence to refute the contention of complainants that such practice had generally prevailed. (Procter & Gamble *v.* C. H. & D. R. Co. *et al.*, 4 I. C. C. Rep. 87, 3 Inters. Com. Rep. 131.) The decision states that, although common soap had always been in fifth class for ten years or more prior to 1899, the charge had been for net weight only, and the revenue on that basis was substantially the same as it would have been if soap had been charged sixth-class rates at gross weight. It was also said in the former decision that the parties in their presentation of the case had confined themselves mainly to the question whether the rate under the new practice of charging for the gross weight was unreasonable or unjust in itself, or as compared with other grocery articles in the fifth and sixth classes. Further on in the opinion we find the following: "It does not appear that there was any complaint of the classification of common soap in the fifth class while the charge was for net weight, or until after the defendants began to charge for the gross weight." And again: "The long existence of the former practice, whereby a less revenue was received than is now realized, tends to show it was satisfactory to the carriers, and nothing appeared to the contrary except the change to the gross-weight system." The final conclusion of the Commission was stated as follows:

"Our best judgment is, upon the showing now made, that the charge on the defendant lines for the transportation of common soap should be limited to what it was before they charged
103 for the gross instead of the net weight. We come to this conclusion with increased confidence from the fact that the classification committee put common soap into the fifth class when the practice was to charge for only net weight, and that the ruling here made will not reduce the revenue from what that committee practically provided by their classification. The present charge, therefore, growing out of the substitution of charging for gross weight in place of net weight did not receive by the act of classification—and, so far as appears, has never received—the approval of the committee. The result is that an order issue directing the defendants in each case to cease and desist from charging the complainants more for the transportation of common or laundry soap and the package containing it than they formerly charged under the net-weight practice."

The order of the Commission, however, as it was issued, was not confined to complainants' traffic, and the defendants were required generally to cease and desist from charging more than sixth-class rates on common soap in carloads.

That controlling importance was give- by the Commission to the effect of the change from the net-weight to the gross-weight practice is manifest from the foregoing extracts taken from the opinion rendered in 1890, and this view is fully confirmed by careful reading of the whole decision. The Commission also said in those cases that it did not appear from the evidence that other manufacturers of common soap were dissatisfied with the present rate (fifth class), and that the question involved was mainly limited in its bearing to

the parties to the complaint. An attempt was made by some of the defendants in the former proceedings to secure a rehearing, but this application was made on affidavits which were regarded as defective and insufficient. (Procter & Gamble *v.* C., H. & D. R. R. Co., 4 I. C. C. Rep., 443, 3 Inters. Com. Rep., 374.) The action of the carriers in again placing carload soap in fifth class on January 1, 1900, and the bringing of this proceeding by complainant as successor to the complainants in the former cases, operated in effect to reopen the whole question, and the evidence now presented shows, as before stated, a materially different state of facts. The net-weight practice, though admitted to exist as to shipments made by Procter & Gamble and other soap shippers in Cincinnati and that section, did not prevail generally throughout Official Classification territory, nor was it, between April 5, 1887, when the act to regulate commerce took effect, and May, 1889, when the shipping at net weights was discontinued at Cincinnati and elsewhere, a regulation shown upon the tariffs of carriers in Official Classification territory. Some such custom was undoubtedly permitted at Cincinnati and in that section, but there is nothing to indicate that the net-weight practice was authorized in the manner required by the act in any part of the territory in question. Although shipping
104 at net weights operated to change the established rates, it was not provided for by publication in the classification or in the tariffs of the various carriers using that classification. Without such specific authority it was, when allowed by carriers or practiced by shippers, in effect a rebate from tariff rates amounting to nearly the difference between fifth and sixth class charges. As we read the testimony and as the findings indicate, the Central West manufacturers very largely indulged in the practice prior to May, 1889, while manufacturers in the East generally shipped during that period at gross weights. While as between Procter & Gamble and the defendant carriers in the former cases the ruling made was not unjust, the decision went further, and upon the then apparent or assumed general prevalence of the net-weight practice, required the defendants to change their rates from fifth to sixth class on soap in carloads, not only for Procter & Gamble but for all other soap shippers over their lines, and the natural effect of compliance by these important roads was to compel a general change to the lower sixth-class rates throughout the whole territory.

Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates, through billing at the full weight of the package and its contents, is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discontinuing the practice of shipping at net weights in any part of the territory; yet, on the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected, and either authorized by carriers generally in that territory, or so well known from constant and general application as to receive implied sanction, it would

not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers applied their established charges on the basis of gross weights. We think this is the proper view to take of the net-weight practice, and that it is the one which would have been taken by the Commission in 1890 if all the facts concerning the practice had been brought out in the cases then decided. In the light of the testimony now before us the former decision, based, as it appears to have been, mainly upon the net-weight practice, should not control the determination of this case.

A further difference in the conditions connected with shipping at net and gross weights also appears in the record. The weight of the boxes used for shipping soap has been considerably reduced, and the difference between gross and net weights is now less than it was in 1890, when the former cases were decided. The boxes now weigh barely 11 per cent of the gross weight, while those formerly used represented about 16⅔ per cent of the gross weight. While the rate applied to the weight of the box then represented
105 about the difference between fifth and sixth class rates, it would now be considerably less; and to ship under fifth-class rates at net weight would at the present time be less favorable to the shipper than to ship under sixth-class rates at gross weight.

A number of members or representatives of soap manufacturing firms and companies have testified in this case on behalf of the complainant, but in this, as in the former cases, no other soap manufacturers intervened on behalf of the complainant or otherwise appeared in their own behalf. After the classification was changed by the carriers on January 1, 1900, this complainant, relying upon the decision rendered by the Commissioner in favor of its predecessor, sought to have the order issued in those cases reenforced, and thereupon brought this proceeding, alleging herein a further grievance resulting from the increase in the classification of less than carload shipments of soap. As shown in the findings, the defendants have directed special attention to the prosperous condition of complainant, and have laid special stress upon the profits accruing to the latter through its ownership and operation of the Ivorydale and Millcreek Valley Railway, which is used to connect complainant's plant with the initial carriers, and which under a contract with such carriers obtains liberal allowance for terminal services rendered in forwarding and receiving freight for complainant at Ivorydale. If the sole question involved was the reasonableness of rates charged to complainant on its soap traffic, or if the rates exacted from it were drawn into comparison with those charged by defendants to competing soap manufacturers, the profits secured by complainant from the operation of its railway, and other special advantages tending to diminish the amount of its transportation expenses would have very material bearing, but that is not the case; the chief question here is as to the justice of the change in the classification of soap, not only as regards the Procter & Gamble Company, but as affecting all soap shippers in this classification territory, for we could rightfully make no order respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers

in Official Classification territory. It follows, therefore, that as the case mainly involves the general question of classification it must be decided in accordance with the principles which properly govern the classification of freight articles.

We have examined the evidence pertaining to the classification of common soap in carloads with great care and have found the facts which appear to be material to the disposition of that branch of the case. Such findings do not bear out the contention of complainant. Soap is analogous in character to articles of general merchandise, particularly those sold in the grocery trade, and which are all in the fifth or higher classes of the classification. It does not move in such great volume, or, to be more explicit, furnish the carriers
106 with such great aggregate tonnage, as to distinguish it specially from other common articles of merchandise; nor is it so low in value as to take it out of comparison in that respect with other fifth-class articles and place it in the category of low-grade freights which require the lower sixth-class rating. It is conceded to be and is a very desirable traffic for the carrier, but equally so are canned goods, sugar, heavy iron articles, and other commodities now included in the fifth class. In the manufacture of soap as conducted by complainant the shipment of large quantities of raw material and fuel is involved, and this furnishes additional traffic to the carrier, but the same thing is true of many other manufacturing industries. These and other matters are set out in detail in the findings, which indicate in substance that soap is a manufactured article of merchandise properly in fifth class as distinguished from the mass of low-grade freights, cheap chemicals, and raw products which are in class six and actually move under sixth-class rates.

A case involving the classification of hay in Official Classification territory has lately been decided in which it was held that hay is improperly in fifth class and should be carried as sixth-class freight. Hay is a raw agricultural product having relatively low value, moving in great volume largely from the West to the East, and apparently furnishing the carriers with greater aggregate tonnage than any single article actually taking class rates, is entitled to transportation at the lowest class rate. Soap as a manufactured article of merchandise not specially low or high in value, and moving under present rates freely in all directions from competing factories in various portions of the classification territory, and furnishing a large but not exceptionally great aggregate tonnage to the carriers, is also entitled to fairly low rates, but upon no reasonable basis of comparison can it be said to merit the low classification demanded by hay and which is given to numerous other articles now in the sixth class. It is possible of course to find commodities in class six which may be compared with soap to the advantage of the latter in some respects, and it is equally possible to find articles which have long been in class five that will compare favorably with soap in some respects; but taking into account the general method or system of classification, whereby the sixth class is designed to include only low-grade freights and the fifth class is made to cover the common grades of grocery and other general merchandise, and considering the other special

facts set out in the findings, we can not condemn as unlawful the classification of soap in carloads in class five.

The reasonableness of fifth-class rates for soap in carloads, considered independently of the principles governing classification, has been adequately treated in the findings, and beyond mentioning one or two general considerations connected with this feature of the case we see no reason for adding to the statement of facts in this
107 regard. The carriers classified soap in carloads as fifth-class freight originally, and only changed it to sixth class in compliance with our order in 1891. However limited the compulsory effect of an order by the Commission may be in the present state of the law, compliance with its requirements can not be regarded as voluntary action by the carriers. There is nothing to show that the carriers would have changed soap in carloads to sixth class in 1891 or later if no order requiring that to be done had been issued. On the contrary, the carriers' representatives have insisted in this case most strenuously that they have always been dissatisfied with the order of 1890 which was complied with in June of the following year. However that may be, it seems clear that the presumption as to the reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in this case. It may be said, in view of the fact that orders of the Commission can only be enforced by action in the Federal courts, that long compliance with an order of the Commission is in effect voluntary; but we think when complaint is made to the Commission, and the case goes to hearing and decision, and order against the carriers is issued with which they comply, that there is a marked distinction in the respect here referred to between rates thus established and like or similar rates applied by the carriers on their volition, and that this distinction is sufficient to remove the presumption of the reasonableness of sixth-class carload rates for soap which would arise if such rates had been voluntarily accorded since June, 1891, without the intervention of an order by the Commission.

It appears reasonably certain that the remarkable increase of traffic which began about 1899 and has continued in enlarging volume to the present time would, at the rates in force prior to the advance of January 1, 1900, have furnished the carriers with net revenues equal at least to those received in any previous year. But this fact, if fully demonstrated, would not, in our opinion, be sufficient of itself to sustain complainant's contention or prove that fifth-class rates for carload soap are unreasonable. On the other hand, we do not decide that the reasonableness of these rates has been affirmatively established. We regard the primary and controlling question in this case as a question of classification; that is, of *relative rates*, and dispose of it accordingly. In that view it is sufficient to hold that carload soap is not improperly placed in the fifth class, and that fifth-class rates therefor are not shown to be unlawful. So long as most articles entitled to as low rates as carload soap are put in the fifth class and required to pay fifth-class rates, we are not warranted, on the evidence before us, in condemning the same rating for that commodity. This disposition of the case, however, will not authorize the retention

of carload soap in fifth class if the classification of other articles with which soap is compared should be reduced, nor will anything
108 now decided preclude the Commission from holding, in an appropriate proceeding, that fifth-class rates in this territory are excessive.

A materially different situation exists in regard to the classification and rates for less than carload shipments of soap. The new class inserted in the Official Classification on March 10, 1900, whereby 20 per cent. less than third-class but not lower than fourth-class rates are provided for less than carload soap and numerous other articles, operates with respect of soap, as above found in this case, to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advances in less degree, or not at all, the less than carload rates paid by soap shippers in New York City and other parts of the East. In other words, the application of a fixed percentage to varying and different rates has the effect of changing the relation of rates which before prevailed on shipments made by complainant and its competitors in the East to common territory. The fourth-class rates for less than carloads were allowed by carriers in Official Classification territory for ten or more years prior to 1891, when they charged fifth-class rates for carloads, and they also remained in effect during all the time from 1891 to 1900, when carload soap was sixth class. Soap in less than carloads, therefore, always had fourth-class rates until January 1, 1900. A presumption that such rates are reasonable arises from the voluntary action of the carriers in keeping those rates in effect during such a long period; and that presumption has not been overcome, in our judgment, by the evidence presented in this case.

Under the operation of the mixed carload rules set out in the findings, coupled with the increased less than carload rates, the meat packers who manufacture soap are given advantages in their competition with complainant and other independent soap producers. The packers are thus enabled to ship in mixed carloads numerous meat and provision articles with less than carload quantities of soap at fifth-class rates, while less than carload quantities of soap forwarded by complainant take 20 per cent. less than third-class rates. The privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers, and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers, but when it appears, as in this case, that shippers like complainant are subjected to additional disadvantage under the operation of a mixed carload rule through the increase in a long-standing less than carload rate, the effect of that rule is properly to be considered in determining the reasonableness and justice of such increased rate.

The discriminating nature of the present less than carload rating of soap seems apparent from illustrations given in the
109 & 110 findings, while a third-class rate for less than carload soap is virtually conceded to be excessive and unjust. It follows that carriers should cease and desist from enforcing the 20

per cent. less than third-class rates on less than carload soap, and from charging complainant and other soap manufacturers higher than fourth-class rates upon such shipments of that commodity. A suitable order dismissing so much of the complaint as relates to rates on common soap in carloads, and sustaining that portion of the complaint which refers to rates on common soap in less than carloads and asks for the restoration of fourth-class rates on less than carload lots, will be entered and served.

Although this determination in effect condemns as unlawful the advanced rates on less than carload shipments of soap, we are constrained to hold, under all the circumstances of the case, that reparation by the carriers should not be required.

111-112 EXHIBIT I.

113 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May, A. D. 1903.

Present: Hon. Martin A. Knapp, chairman, Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Hon. Joseph W. Fifer, Commissioners.

THE PROCTER & GAMBLE COMPANY

v.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE AND OHIO RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full consideration of the matters and things involved having been had, and the Commission having, on the 10th day of April, 1903, made and filed a report and opinion containing its findings of fact and conclusions herein, which said report and opinion is hereby referred to and made a part hereof:

It is ordered, That the defendants, the Cincinnati, Hamilton and Dayton Railway Company; the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company; the Pennsylvania Railroad Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; the Lake Shore and Michigan Southern Railway Company; the New York Central and Hudson River Railroad Company; the Baltimore and Ohio Southwestern Railroad Company, and the Baltimore and Ohio Railroad Company, be, and they severally are hereby, notified and required to cease and desist, on or before the 15th day of June, 1903, from charging, demanding, collecting, or receiving for the transportation of common or laundry soap in less than carload quan-

tities charges or rates per 100 pounds equal to 20 per cent. less than rates fixed by them for the transportation of articles designated as third class in their established freight classification called and known as the "Official Classification," which said 20 per cent. less than third-class rates for the transportation of common or laundry soap
114 in less than carloads are found and determined in and by said report and opinion of the Commission to be in violation of the act to regulate commerce.

It is further ordered, That so much of the complaint herein which refers to rates on common or laundry soap in carloads be, and the same is hereby, dismissed.

And it is further ordered, That a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

Certificate.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, nine in number, and marked A to I, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission at the city of Washington, in the District of Columbia, this 15th day of July, 1904.

[SEAL.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

115 And afterwards, to-wit: on the 20th day of July, A. D. 1904, came the Complainant by its Solicitor and filed in the Clerk's Office of the Court aforesaid, its certain Motion, in this cause, which said Motion is clothed in the words and figures following, to-wit:

In the Circuit Court of the United States for the Southern District of Ohio.

In Equity. No. 5897.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND CINCINNATI, CHICAGO, & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE & OHIO RAILROAD COMPANY, Defendants.

Motion of Complainant.

And now comes the Interstate Commerce Commission, complainant in the above entitled cause, by Sherman T. McPherson, Esq., United States District Attorney for the Southern District of Ohio, and moves and respectfully prays the Court for an order as to the manner of service of the bill of complaint in said cause and as to the manner of service of this motion and of the order thereon, and that the Court require the defendants above named to file their answers to said bill of complaint on or before a day certain to be fixed by the Court, and also to appear before the Court here at such time as may be fixed by the Court, then and there to show cause why such other preliminary orders as to the Court may seem meet shall not be entered to speed the cause to a final hearing, as provided for in the 16th section of the Act to regulate commerce.

SHERMAN T. McPHERSON,
United States District Attorney for the Southern District of Ohio.

116 And afterwards, to-wit: on the 20th day of July, A. D. 1904, an Entry was made upon the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

In the Circuit Court of the United States for the Southern District of Ohio.

THE INTERSTATE COMMERCE COMMISSION

vs.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE & OHIO RAILROAD COMPANY, Defendants.

Order of Court on Complainant's Motion.

And now, upon the filing of the bill of complaint and accompanying motion herein, it is hereby

Ordered, that the Secretary of the Interstate Commerce Commission be, and he is hereby, authorized to make service of said bill of complaint and accompanying motion and of this order by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of the said Interstate Commerce Commission, correctly addressed to the President or one of the Vice-Presidents or the Secretary of each of the defendants above named.

It is also hereby ordered that the said defendants file their answers to said bill of complaint on or before the 20th day of August, 1904, and also appear before the Court on the 10th day of September, 1904; and show cause why such other and further preliminary orders as to the court may seem meet should not be entered in this cause to speed the same to a final hearing.

Done this 20th day of July, A. D. 1904.

A. C. THOMPSON, *Judge.*

117 And afterwards, to-wit:—on the 15th day of August, A. D. 1904, came the Defendant, The Baltimore & Ohio Railroad Co., by its Solicitors, and filed in the Clerk's Office of the Court aforesaid, its certain Answer in this cause, which said Answer is clothed in the words and figures, following, to-wit:—

Answer of the Baltimore and Ohio Railroad Co.

In the Circuit Court of the United States for the Southern District of Ohio.

In Equity. No. 5897.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., Defendants.

To the Circuit Court of the United States, Sitting in Equity within and for the Southern District of Ohio:

The Answer of The Baltimore and Ohio Railroad Company, one of the defendants in the above entitled cause, to the petition of the Interstate Commerce Commission duly filed in this Court, respectfully shows:—

1. The defendant admits that it is a corporation, as alleged in Paragraph 1 of said petition, organized and existing under the laws of the State of Maryland, having its principal office in the City of Baltimore in said State of Maryland.

With respect to the allegations of Paragraph 1 of said petition regarding the other defendants, defendant is not informed and can not answer.

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2. Defendant admits for itself that as alleged in Paragraph 2 of said petition it was on December 15, 1899, and since has been and now is a common carrier engaged in the transportation of persons and property by railroad under joint through rates as therein alleged, and particularly has been engaged in the transportation of common or laundry soap in carload lots and less than carload lots in official classification territory as therein set out, and in respect to such transportation was and is subject to the provisions of the Act to regulate commerce and the amendments thereto. As to the other defendants, said railroad company is not informed and can not answer.

3. This defendant admits that on February 24th, the Proctor and Gamble Company filed a complaint with the Interstate Commerce Commission, as alleged in Paragraph 3 of said petition, and that a copy of said complaint was duly forwarded by said Commission to this defendant.

4. This defendant admits that it filed the answer to said complaint, copy of which is annexed to and made part of said petition, marked "Exhibit G."

5. Defendant admits that thereafter, the cause being at issue, hearings were had thereon at various times and places as alleged in Paragraph 5 of said petition.

6. Defendant admits that on April 10, 1903, the Report and Opinion of the Interstate Commerce Commission in said cause was handed down, a copy whereof is attached to said petition as "Exhibit H," as alleged in Paragraph 6 of said petition, but defendant says that the findings of facts and the conclusions of said Commission as

therein set out were erroneous, as will be more fully shown at the further hearing of this cause.

119 7. This defendant admits that afterwards, on May 14th, the petitioner formulated the order set out and mentioned in Paragraph 7 of said petition.

8. Defendant admits that a copy of said order was delivered to it as set out in Paragraph 8 of said petition, but defendant avers that said order, as well as the Report and Opinion of the Commission upon which same was based, is and are illegal and erroneous and not binding upon this defendant,—wherefore defendant says that it has not wilfully and knowingly violated and disobeyed any lawful order, although for reasons which will be more fully shown hereafter and at the further hearing of this cause, it has not complied with the order mentioned in Paragraph 8 of said petition.

9. Defendant says that its action in classifying common or laundry soap in less than carload lots at twenty per cent. (20%) below third class rates (the same not being more than fourth class rates in all cases, as alleged, but in many cases being the same as fourth class rates) was not in violation of the Act to regulate commerce. Defendant says that the rates based upon said classification for the transportation of common or laundry soap in less than carload lots are not in violation of Section 1 of the Act to regulate commerce, but that said rates are reasonable and just, and that said rates are not in violation of Section 3 of said Act, nor do they give an undue and unreasonable preference or advantage to other descriptions of traffic, nor subject common or laundry soap in less than carload lots to an undue prejudice and disadvantage. Defendant denies that the changes in classification which produced said rating are unreasonable and unjust or result in unlawful discrimination or prejudice against common or laundry soap in less than carload lots or against localities in official classification territory, wherein commodities

120 are produced and transported, or against producers, shippers, dealers and consumers in said territory. Defendant further says that there can be no proper issue in this cause as to the change of classification on December 29, 1899, from fourth class to third class, as there were no findings of the Interstate Commerce Commission based upon said change, but that their findings (upon which this proceeding is based) were restricted to the rate of twenty per cent. (20%) less than third class. But if said change from fourth class to third class be properly in issue in this cause, this defendant denies that the same was unreasonable or unjust, or preferential, or discriminatory in any wise whatever. All of which defendant asks leave to verify by proof.

And having fully answered, the defendant asks to be dismissed with its reasonable costs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By HUGH L. BOND, JR.
Second Vice-President and General Attorney.

HARMON, COLSTON, GOLDSMITH & HOADLY,
Solicitors.

EDWARD COLSTON, *Counsel.*

STATE OF MARYLAND, *City of Baltimore, to-wit:*

I hereby certify that on this Twelfth day of August, in the year 1904, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Hugh L. Bond, Jr., who, being by me first duly sworn, deposes and says that he is the Second Vice-President and General Attorney of The Baltimore and Ohio Railroad Company, whose name is signed to the foregoing answer of The Baltimore and Ohio
121 Railroad Company; that he has read the same and knows the contents thereof; and that the matters and facts therein stated are true to the best of his knowledge and belief, except those matters and facts stated on information and belief, and as to these he verily believes them to be true.

HUGH L. BOND, JR.

Witness my hand and official seal.
[SEAL.] GEO. W. HAULENBECK,
Notary Public.

122 And afterwards, to-wit: on the 16th day of August A. D. 1904, came the Defendant the Baltimore & Ohio Southwestern Railroad Company, by its Solicitors and filed in the Clerk's Office of the Court aforesaid, its certain Answer, in this cause, which said Answer is clothed in the words and figures following, to-wit:

Circuit Court of the United States, Southern District of Ohio, Western Division. In Equity.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendants.

Answer of the Baltimore and Ohio Southwestern Railroad Company to the Bill of Complaint of the Interstate Commerce Commission, Petitioner.

This defendant saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in said bill contained, for answer to so much thereof as it is advised it is necessary or material for it to answer thereunto, does aver and say that;

1. It admits the allegations of said bill of complaint made in par-

agraphs I, II., III., IV., V., VI., VII. and VIII., respectively, to be true.

2. This defendant says that the action of the defendants herein, December 29, 1899, in raising the classification of common or laundry soap in less than carload quantities from fourth-class to
123 third-class rates, was not in violation of the act of Congress of the United States known as the act to regulate commerce, and says that the rates charged by defendants herein since December 29, 1899, for the transportation of common or laundry soap in less than carload lots are not in violation of section 1 of said act and are neither unreasonable nor unjust, and says that said rates neither are nor have been in violation of section 3 of said act, and that said rates have not and do not give an undue nor unreasonable preference nor advantage over any other description of traffic, and have not and do not subject common or laundry soap in less than carload lots to an undue prejudice or disadvantage. This defendant further says that the change in classification by the defendants herein, effective December 29, 1899, whereby common or laundry soap in less than carload quantities, was changed from fourth to third-class, and the change in classification effective March 10, 1900, whereby said soap was charged more than fourth-class rates, to-wit: 20 per cent. below third-class rates, were not in violation of said act of Congress and that said changes were not either unreasonable or unjust, and do not result in any unlawful discrimination or prejudice against common or laundry soap in less than carload lots, nor against localities in official classification territory, wherein commodities are produced and transported, nor any unlawful discrimination or prejudice against producers, shippers, dealers and consumers in said territory.

Defendant says that its board of directors and the respective boards of directors of the other co-defendants had the right to and did fix the rates in question, and that said rates did not and do not violate any law of the United States.

And having thus fully answered unto said bill this defendant prays to be hence dismissed with its costs.

[SEAL.] HARMON, COLSTON, GOLDSMITH & HOADLY,
Solicitors for The Baltimore & Ohio Southwestern Railroad Company, Defendant.

EDWARD COLSTON,
Counsel.

124 STATE OF OHIO, *Hamilton County, ss:*

William M. Greene, Vice President and General Manager of The Baltimore & Ohio Southwestern Railroad Company, having read the foregoing answer and being duly sworn says that the matters and things in said answer contained are true as he verily believes.

WILLIAM M. GREENE.

Subscribed and sworn to before me this 15 day of August A. D. 1904.

JNO. M. WALSH.
[SEAL.] *Notary Public, Hamilton County, Ohio.*

[Endorsed:] Answer of B. & O. S. W. R. R. Co.

125 And afterwards, to-wit: on the 17th day of August A. D. 1904, came the Defendant The New York Central & Hudson River Railroad Company, by its Solicitor and filed in the Clerk's Office of the Court aforesaid, its certain Answer, in this cause, which said Answer is clothed in the words and figures following, to-wit:

In the Circuit Court of the United States for the Southern District of Ohio.

In Equity. No. —.

THE INTERSTATE COMMERCE COMMISSION, Plaintiff,

vs.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendants.

To the Circuit Court of the United States Sitting in Equity within and for the Southern District of Ohio:

The New York Central and Hudson River Railroad Company, one of the defendants herein, for its separate answer to the petition of the plaintiff states:

I.

That it admits its corporate organization and existence under the laws of the State of New York as alleged in plaintiff's complaint.

II.

That this defendant and its co-defendants were on December 15, 1899, and ever since have been, and are, common carriers engaged in transportation of persons and property by railroad under joint through rates and as members of continuous lines between different points in the United States, and that they were and since have been so engaged in transportation of common or laundry soap in carload quantities, and in less than carload quantities, between va-
126 rious points in the several states of the United States within that portion of the United States known and described as Official Classification territory, and admits that said territory is bounded as set out and mentioned in plaintiff's petition in Paragraph Two.

III.

This defendant admits that on February 24, 1900, the Procter & Gamble Company was a corporation organized under the laws of the

State of Ohio, and filed under section 13 of the said act to regulate commerce, a petition and complained to the petitioner herein, the Interstate Commerce Commission, alleging violations on the part of said defendants of certain portions of said act fully set out in said complaint and filed in the office of said Commission, a copy of which petition appears with plaintiff's petition herein and is designated as "Exhibit A," and that a copy of said petition of The Procter & Gamble Company was served upon this defendant and its co-defendants.

IV.

Defendant admits that on various dates between March 14, 1900, to April 4, 1900, said defendants filed answers to said complaint, Exhibit A, of plaintiff's petition herein, and that copies of said answers are annexed to and made a part of plaintiff's petition, and are marked Exhibits B, C, D, E, F, and G.

V.

That afterwards the said cause came on for hearing and investigation before the said Inetrstate Commerce Commission, at various times and places at which hearings the said Procter & Gamble Company and the said defendants herein duly appeared, by their attorneys, and that from October 21, 1901, to October 24, 1901, the said parties appeared, by their attorneys, at Washington, D. C.,
127 and argument was had before said Interstate Commerce Commission in behalf of all parties named in said action.

VI.

Defendant further admits that on April 10, 1903, the Interstate Commerce Commission, petitioner herein, determined the matter in controversy in said proceedings then pending before it, and made its report in writing in respect thereof, setting forth the conclusions it had reached and the findings of fact upon which such conclusions were based, and that the same appears by the report of said Commission, a copy of which is annexed to plaintiff's petition herein and is designated as Exhibit H.

Defendant admits that afterwards, on May 14, 1903, the petitioner herein formulated an order, basing the same upon its conclusions as set forth in said Exhibit H, and directed said defendants, being the defendants herein, to cease and desist, on or before June 15, 1903, from charging, demanding, collecting or receiving for the transportation of common or laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by said carriers for the transportation of articles designated as "third-class," in the established freight classification, known as the "Official Classification," which said 20 per cent. less than third-class rates for the transportation of common or laundry soap in less than carload quantities are found and determined in and by said report and opinion of said Interstate Commerce Commission to be in violation of said act to regulate commerce, a copy of which order appears in plaintiff's Exhibit I.

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VIII.

That the petitioner herein, the Interstate Commerce Commission, caused an authenticated copy of said report, opinion and order, being said Exhibits H. and I. annexed to said petition, to be delivered to this defendant and its co-defendants; and this defendant further admits that it wholly disregarded said order of said petitioner and has refused and does now refuse to obey the same.

IX.

And for further separate answer to plaintiff's petition herein this defendant denies each and all of the averments in Paragraph Nine of plaintiff's petition, and denies that the classification of common or laundry soap in less than carload quantities on December 29, 1899, changing the same from fourth class to third class, and subsequently on March 10, 1900, changing the classification of common or laundry soap in less than carload quantities to 20 per cent. below third-class rates were in violation of the said act to regulate commerce; and further denies that the rates charged by defendants since December 29, 1899 for the transportation of common or laundry soap in less than carload quantities was and is a violation of section 1 of the act to regulate commerce; and denies that the said classification and charges were or are unreasonable and unjust; and denies that said rates are, and have been in violation of section 3 of said act and give an undue and unreasonable preference or advantage to other descriptions of traffic and subject common or laundry soap in less than carloads to an undue prejudice and disadvantage.

This defendant further denies that the classification of common or laundry soap and the shipment of the same under such classification so made by said Classification Committee, in less than carload quantities, and charges therefor were unreasonable and unjust and resulted in unlawful discrimination or prejudice against common or laundry soap in less than carload quantities, and against lo-

129 calities in Official Classification territory, and against producers, shippers, dealers and consumers in said territory.

Defendant avers that the classification of common and laundry soap as fixed by said Classification Committee effective December 29, 1899, whereby common or laundry soap was changed from fourth to third class, and the change made in the classification thereof effective March 10, 1900 whereby common or laundry soap in less than carload quantities was changed to 20 per cent. below third-class rates was fair, reasonable and just and was not an unjust discrimination as compared with other like commodities; nor did said classification work a discrimination against the producers, shippers, dealers and consumers in said Official Classification territory.

Defendant further avers that the change in the classification of common or laundry soap as complained of in plaintiff's petition was mad- and was justified by reason of the conditions existing at that time and which still exist.

Defendant further avers that said findings and conclusions of the petitioner herein, the Interstate Commerce Commission, were not authorized by the facts or by the evidence submitted to said Inter-

state Commerce Commission, but were contrary to the facts and evidence, and that the Commission erred in its findings and conclusions and in promulgating said order requiring said defendants to desist "from charging, demanding, collecting, or receiving for the transportation of common laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by them for the transportation of articles designated as 'third class,' in their established freight classification, called and known as Official Classification."

130 Wherefore, defendant asks that plaintiff's petition herein be dismissed.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By S. O. BAYLESS, *Its Attorney.*

STATE OF OHIO, *Hamilton County ss:*

Samuel O. Bayless, first being duly sworn, upon his oath says that he is the Attorney for the New York Central and Hudson River Railroad Company, defendant herein, and is authorized to make and file said defendant's verified answer herein. Affiant further says that the matters and facts alleged in the above and foregoing answer are true in substance and in fact, as he verily believes.

SAMUEL O. BAYLESS.

Subscribed in my presence and sworn to before me this 15th day of August, 1904.

[SEAL.]

NEAL D. CARTER,
Notary Public Hamilton County, Ohio.

131 And afterwards, to-wit, but on the same day as last aforesaid, came the Defendant, The C. C. C. & St. L. Railway Co., by its Solicitor, and filed in the Clerk's Office of the Court aforesaid, its certain Separate Answer in this cause, which said Separate Answer is clothed in the words and figures following, to-wit:

Separate Answer of The Cleveland, Cincinnati, Chicago & St. Louis Railway Co.

In the Circuit Court of the United States for the Southern District of Ohio.

In Equity. No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner.

vs.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendants.

To the Circuit Court of the United States sitting in equity within and for the Southern District of Ohio:

The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, one of the defendants herein, for its separate answer to the petition of the plaintiff states:

I.

That it admits its corporate organization and existence under the laws of the states of Ohio and Indiana as alleged in plaintiff's petition.

132 II.

That this defendant and its co-defendants were on December 15, 1899, and ever since have been, and are, common carriers engaged in transportation of persons and property by railroad under joint through rates and as members of continuous lines between different points in the United States, and that they were and since have been so engaged in transportation of common or laundry soap in carload quantities, and in less than carload quantities, between various points in the several States of the United States within that portion of the United States, known and described as Official Classification territory, and admits that said territory is bounded as set out and mentioned in plaintiff's petition in Paragraph Two.

III.

This defendant admits that on February 24, 1900, the Procter & Gamble Company was a corporation organized under the laws of the State of Ohio, and filed under section 13 of the said act to regulate

commerce, a petition and complained to the petitioner herein, the Interstate Commerce Commission, alleging violations on the part of said defendants of certain portions of said act fully set out in said complaint and filed in the office of said Commission, a copy of which petition appears with plaintiff's petition herein and is designated as "Exhibit A.," and that a copy of said petition of the Procter & Gamble Company was served upon this defendant and its co-defendants.

IV.

Defendant admits that on various dates between March 14, 1900, to April 4, 1900, said defendants filed answers to said complaint, Exhibit A. of plaintiff's petition herein, and that copies of said answers are annexed to and made a part of plaintiff's petition,
133 and are marked Exhibits B. C. D. E. F. and G.

V.

That afterwards the said cause came on for hearing and investigation before the said Interstate Commerce Commission, at various times and places at which hearings the said Procter & Gamble Company and the said defendants herein duly appeared, by their attorneys, and that from October 21, 1901, to October 24, 1901, the said parties appeared, by their attorneys, at Washington, D. C., and argument was had before said Interstate Commerce Commission in behalf of all parties named in said action.

VI.

Defendant further admits that on April 10, 1903, the Interstate Commerce Commission, petitioner herein, determined the matter in controversy in said proceedings then pending before it, and made its report in writing in respect thereof, setting forth the conclusions it had reached and the findings of fact upon which such conclusions were based, and that the same appears by the report of said Commission, a copy of which is annexed to plaintiff's petition herein and is designated as Exhibit H.

VII.

Defendant admits that afterwards, on May 14, 1903, the petition herein formulated an order, basing the same upon its conclusions as set forth in said Exhibit H., and directed said defen-ants, being the defendants herein, to cease and desist, on or before June 15, 1903, from charging, demanding, collecting, or receiving for the transportation of common or laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by said carriers for the transportation
134 of articles designated as "third class," in the established freight classification, known as the "Official Classification," which said 20 per cent. less than third-class rates for the transportation of common or laundry soap in less than carload quantities are found and determined in and by said report and opinion of said

Interstate Commerce Commission to be in violation of said act to regulate commerce, a copy of which order appears in plaintiff's Exhibit I.

VIII.

That the petitioner herein, the Interstate Commerce Commission, caused an authenticated copy of said report, opinion and order, being said Exhibits H. and I. annexed to said petition, to be delivered to this defendant and its co-defendants; and this defendant further admits that it wholly disregarded said order of said petitioner and has refused and does now refuse to obey the same.

IX.

And for further separate answer to plaintiff's petition herein this defendant denies each and all of the averments in Paragraph Nine of plaintiff's petition, and denies that the classification of common or laundry soap in less than carload quantities on December 29, 1899, changing the same from fourth class to third class, and subsequently on March 10, 1900, changing the classification of common or laundry soap in less than car load quantities to 20 per cent. below third-class rates were in violation of the said act to regulate commerce; and further denies that the rates charged by defendants since December 29, 1899 for the transportation of common or laundry soap in less than carload quantities was and is a violation of section 1 of the act to regulate commerce; and denies that the said classification and charges were or are unreasonable and unjust; and denies that said rates are, and have been in violation of section 3 of said act and give an undue and unreasonable preference or advantage to other descriptions of traffic and subject common or laundry soap in less than carloads to an undue prejudice and disadvantage.

135

This defendant further denies that the classification of common or laundry soap and the shipment of the same under such classification so made by said Classification Committee, in less than carload quantities, and charges therefor were unreasonable and unjust and resulted in unlawful discrimination or prejudice against common or laundry soap in less than carload quantities, and against localities in Official Classification territory, and against producers, shippers, dealers, and consumers in said territory.

Defendant avers that the classification of common and laundry soap as fixed by said Classification Committee effective December 29, 1899, whereby common or laundry soap was changed from fourth to third class, and the change made in the classification thereof effective March 10, 1900, whereby common or laundry soap in less than carload quantities was changed to 20 per cent. below third-class rates was fair, reasonable and just and was not an unjust discrimination as compared with other like commodities; nor did said classification work a discrimination against the producers, shippers, dealers and consumers in said Official Classification territory.

Defendant further avers that the change in the classification of common or laundry soap as complained of in plaintiff's petition was made and was justified by reason of the condition existing at that time and which still exist.

Defendant further avers that said findings and conclusions of the petition herein, the Interstate Commerce Commission, were
136 not authorized by the facts or by the evidence submitted to said Interstate Commerce Commission, but were contrary to the facts and evidence, and that the Commission erred in its findings and conclusions and in promulgating said order requiring said defendants to desist "from charging, demanding, collecting, or receiving for the transportation of common or laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by them for the transportation of articles designated as 'third class,' in their established freight classification, called and known as 'Official Classification.'"

Wherefore, defendant asks that plaintiff's petition herein be dismissed.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
By S. O. BAYLESS, *Its Attorney.*

STATE OF OHIO, *Hamilton County, ss:*

Samuel O. Bayless first being duly sworn, upon his oath says that he is the Attorney of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, defendant herein, and is authorized to make and file said defendant's verified answer herein. Affiant further says that the matters and facts alleged in the above and foregoing answer are true in substance and in fact, as he verily believes.

SAMUEL O. BAYLESS.

Subscribed in my presence and sworn to before me this 15th day of August, 1904.

NEAL D. CARTER,
[SEAL.] *Notary Public, Hamilton County, Ohio.*

137 And afterwards, to-wit, but on the same day as last aforesaid, came the Defendant, The L. S. & M. Southern Ry. Company, by its Solicitor, and filed in the Clerk's Office of the Court aforesaid, its certain Separate Answer in this cause, which said Separate Answer is clothed in the words and figures, following, to-wit:—

Separate Answer of The Lake Shore & Michigan Southern Railway Company.

In the Circuit Court of the United States for the Southern District of Ohio.

In Equity. No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,

vs.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY; and THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendants.

To the Circuit Court of the United States sitting in in equity within and for the Southern District of Ohio:

The Lake Shore and Michigan Southern Railway Company, one of the defendants herein, for its separate answer to the petition of the plaintiff states:

I.

That it admits its corporate organization and existence under the statutes of the States of New York, Pennsylvania, Ohio, Michigan, Indiana and Illinois, as alleged in plaintiff's petition.

138

II.

That this defendant and its co-defendants were on December 15, 1899, and ever since have been, and are, common carriers engaged in transportation of persons and property by railroad under joint through rates and as members of continuous lines between different points in the United States, and that they were and since have been so engaged in transportation of common or laundry soap in carload quantities, and in less than carload quantities, between various points in the several states of the United States within that portion of the United States, known and described as Official Classification territory, and admits that said territory is bounded as set out and mentioned in plaintiff's petition in Paragraph Two.

III.

This defendant admits that on February 24, 1900, the Proctor & Gamble Company was a corporation organized under the laws of the State of Ohio, and filed under section 13 of the said act to regulate commerce, a petition and complained to the petitioner herein, the

Interstate Commerce Commission, alleging violations on the part of said defendants of certain portions of said act fully set out in said complaint and filed in the office of said Commission, a copy of which petition appears with plaintiff's petition herein and is designated as "Exhibit A.," and that a copy of said petition of the Proctor & Gamble Company was served upon this defendant and its co-defendants.

IV.

Defendant admits that on various dates between March 14, 1900, to April 4, 1900, said defendants filed answers to said complaint, Exhibit A. of plaintiff's petition herein, and that copies of said answers are annexed to and made a part of plaintiff's petition,
139 and are marked Exhibits B. C. D. E. F. and G.

V.

That afterwards the said cause came on for hearing and investigation before the said Interstate Commerce Commission, at various times and places at which hearings the said Proctor & Gamble Company and the said defendants herein duly appeared, by their attorneys, and that from October 21, 1901, to October 24, 1901, the said parties appeared, by their attorneys, at Washington, D. C., and argument was had before said Interstate Commerce Commission in behalf of all parties named in said action.

VI.

Defendant further admits that on April 10, 1903, the Interstate Commerce Commission, petitioner herein, determined the matter in controversy in said proceedings then pending before it, and made its report in writing in respect thereof, setting forth the conclusions it had reached and the findings of fact upon which such conclusions were based, and that the same appears by the report of said Commission, a copy of which is annexed to plaintiff's petition herein and is designated as Exhibit H.

VII.

Defendant admits that afterwards, on May 14, 1903, the petition herein formulated an order, basing the same upon its conclusions as set forth in said Exhibit H., and directed said defendants, being the defendants herein, to cease and desist, on or before June 15, 1903, from charging, demanding, collecting, or receiving for the transportation of common or laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by said carriers for the transportation of articles
140 designated as "third class," in the established freight classification, known as the "Official Classification," which said 20 per cent. less than third-class rates for the transportation of common or laundry soap in less than carload quantities are found and determined in and by said report and opinion of said Interstate Com-

merce Commission to be in violation of said act to regulate commerce, a copy of which order appears in plaintiff's Exhibit I.

VIII.

That the petitioner herein, the Interstate Commerce Commission, caused an authenticated copy of said report, opinion and order, being said Exhibits II. and I. annexed to said petition, to be delivered to this defendant and its co-defendants; and this defendant further admits that it wholly disregarded said order of said petitioner and has refused and does now refuse to obey the same.

IX.

And for further separate answer to plaintiff's petition herein this defendant denies each and all of the averments in Paragraph Nine of plaintiff's petition, and denies that the classification of common or laundry soap in less than carload quantities on December 29, 1899, changing the same from fourth class to third class, and subsequently on March 10, 1900, changing the classification of common or laundry soap in less than car load quantities to 20 per cent. below third-class rates were in violation of the said act to regulate commerce; and further denies that the rates charged by defendants since December 29, 1899 for the transportation of common or laundry soap in less than carload quantities was and is a violation of section 1 of the act to regulate commerce; and denies that the said classification and charges were or are unreasonable and unjust; and denies that said rates are, and have been in violation of section 3 of said act
141 and give an undue and unreasonable preference or advantage to other descriptions of traffic and subject common or laundry soap in less than carloads to an undue prejudice and disadvantage.

This defendant further denies that the classification of common or laundry soap and the shipment of the same under such classification so made by said Classification Committee, in less than carload quantities, and charges therefor were unreasonable and unjust and resulted in unlawful discrimination or prejudice against common or laundry soap in less than carload quantities, and against localities in Official Classification territory, and against producers, shippers, dealers, and consumers in said territory.

Defendant avers that the classification of common and laundry soap as fixed by said Classification Committee effective December 29, 1899, whereby common or laundry soap was changed from fourth to third class, and the change made in the classification thereof effective March 10, 1900, whereby common or laundry soap in less than carload quantities was changed to 20 per cent. below third-class rates was fair, reasonable and just and was not an unjust discrimination as compared with other like commodities; nor did said classification work a discrimination against the producers, shippers, dealers and consumers in said Official Classification territory.

Defendant further avers that the change in the classification of common or laundry soap as complained of in plaintiff's petition was

made and was justified by reason of the conditions existing at that time and which still exist.

Defendant further avers that said findings and conclusions of the petition- herein, the Interstate Commerce Commission, were
142 not authorized by the facts or by the evidence submitted to said Interstate Commerce Commission, but were contrary to the facts and evidence, and the Commission erred in its findings and conclusions and in promulgating said order requiring said defendants to desist "from charging, demanding, collecting, or receiving for the transportation of common or laundry soap, in less than carload quantities, charges or rates per hundred pounds equal to 20 per cent. less than rates fixed by them for the transportation of articles designated as 'third class,' in their established freight classification, called and known as 'Official Classification.'"

Wherefore, defendant asks that plaintiff's petition herein be dismissed.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
By S. O. BAYLESS, *Its Attorney.*

STATE OF OHIO, *Hamilton County, ss:*

Samuel O. Bayless first being duly sworn, upon his oath says that he is the Attorney of The Lake Shore and Michigan Southern Railway Company, defendant herein, and is authorized to make and file said defendant's verified answer herein. Affiant further says that the matters and facts alleged in the above and foregoing answer are true in substance and in fact, as he verily believes.

SAMUEL O. BAYLESS.

Subscribed in my presence and sworn to before me this 15th day of August, 1904.

[SEAL.] NEAL D. CARTER,
Notary Public, Hamilton County, Ohio.

143 And afterwards, to-wit: on the 20th day of August, A. D. 1904, came the Defendants The C. H. & D. Ry. Co., The P. C. C. & S. L. Ry. Co. and The Pennsylvania Railroad Co. by their Solicitors and filed in the Clerk's Office of the Court aforesaid, their certain Answer in this cause, which said Answer is clothed in the words and figures following to-wit:

Circuit Court of the United States, Southern District of Ohio, Western Division.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY; THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendants.

Joint and Several Answer of The Cincinnati, Hamilton and Dayton Railway Company, The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and The Pennsylvania Railroad Company, Defendants.

1. These defendants admit the allegations of paragraphs I, II, III, IV, V, VI, VII and VIII of the bill of complaint.

2. They say that the action of the defendants herein, December 29, 1899, in raising the classification of common or laundry soap in less than carload quantities from fourth class to third class rates, was not in violation of the Act of Congress to regulate commerce, and that the rates charged by the defendants since December 29, 1899, for the transportation of common or laundry soap in less than carload lots are not in violation of Section 1 of said Act, and are not unreasonable or unjust, and that they are not in violation of
144 Section 3 of said Act, and that they do not give an undue or unreasonable preference or advantage over any other description of traffic, and do not subject common or laundry soap in less than carload lots to an undue prejudice or disadvantage. They also say that the change in classification effective December 29, 1899, whereby common or laundry soap in less than carload lots was changed from fourth class to third class, and the change in classification effective March 10, 1900, whereby said soap was charged more than fourth class rates, to-wit, 20 per cent. below third class rates, were not in violation of said Act of Congress, and that said changes are not unreasonable or unjust, and do not result in an unlawful discrimination or prejudice against common or laundry soap in less than carload lots, nor against localities in official classification territory, nor in any unlawful discrimination or prejudice against producers, shippers, dealers or consumers in said territory.

They say that their boards of directors and the boards of directors of the other defendants had the right to fix and did fix the rates in question, and that said rates do not violate any law of the United States.

3. They say that said findings and conclusions of the Interstate Commerce Commission were not authorized by the evidence submitted to it, but were contrary to said evidence, and that the Commission erred in its findings and conclusions and in promulgating said order requiring the defendants to desist from charging said rates for transportation of common or laundry soap in less than carload lots.

THE CINCINNATI, HAMILTON & DAYTON RY. CO.,
By MAXWELL & RAMSEY, *Its Attorneys.*
THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
By MAXWELL & RAMSEY, *Its Attorneys.*
145 THE PENNSYLVANIA RAILROAD COMPANY,
By MAXWELL & RAMSEY, *Its Attorneys.*

STATE OF OHIO, *Hamilton County, ss:*

Alexander H. McLeod, being first duly sworn, says that he is Freight Traffic Manager of the defendant, The Cincinnati, Hamilton and Dayton Railway Company; that he has read the foregoing joint and several answer and knows the contents thereof, and that the same is true, except as to matters therein alleged upon information and belief, and that as to such matters he believes it to be true.

ALEXANDER H. McLEOD.

Sworn to before me and subscribed in my presence this 20th day of August, 1904.

[SEAL.] JOSEPH L. LACKNER,
Notary Public, Hamilton County, Ohio.

LAWRENCE MAXWELL, JR., *Counsel.*

146 And afterwards, to-wit: on the 24th day of September, A. D. 1904, a stipulation, was filed in the Clerk's Office of the Court aforesaid, in said cause, which said stipulation is clothed in the words and figures following to-wit:

Circuit Court of the United States, Southern District of Ohio, Western Division.

In Equity. No. 5897.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

Stipulation.

In the above case it is stipulated and agreed by counsel that either party on the hearing of said case may use as evidence extracts from rates on file with the Interstate Commerce Commission, extracts from annual reports filed by the defendant carriers with the said Commission, and extracts from statistical or other data compiled by, or on file in the offices of the Statistician and Auditor of the said Commission, subject to objection by either party as to its competency or relevancy, but all formal objections are waived. Copies of such extracts as may be intended to be used by either party shall be certified by the Secretary of said Commission and furnished to the opposite party, who shall have fifteen days thereafter in which to file counter extracts of testimony.

SHERMAN T. McPHERSON, *District Attorney.*
L. A. SHAVER,
Solicitor for Interstate Commerce Commission.
LAWRENCE MAXWELL, JR.,
For The Cincinnati, Hamilton & Dayton Railway Co., The Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co., and The Pennsylvania Railroad Company.
SAMUEL O. BAYLISS,
For The Cleveland, Cincinnati, Chicago & St. Louis Railway Co., The Lake Shore & Michigan Southern Railway Co., and The New York Central & Hudson River Railroad Co.
HARMON, COLSTON, GOLDSMITH & HOADLY,
For The Baltimore & Ohio and Baltimore & Ohio Southwestern Railroad Companies.

147 And afterwards, to-wit: but on the same day a stipulation, was filed in the Clerk's Office of the Court aforesaid, in said cause, which said stipulation is clothed in the words and figures following to-wit:

Stipulation.

Circuit Court of the United States, Southern District of Ohio, Western Division.

In Equity No. 5897.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; and THE BALTIMORE AND OHIO RAILROAD COMPANY,

It is stipulated in this case that any party may use the whole or any part of the testimony and exhibits filed with the Interstate Commerce Commission on the hearing of the complaint of The Proctor & Gamble Company against the defendants above named filed February 24, 1900, subject to objections by either party as to its competency or relevancy, but all formal objections are waived.

THE INTERSTATE COMMERCE COMMISSION,
By L. A. SHAVER, *Solicitor.*
LAWRENCE MAXWELL, JR.,
For The Cincinnati, Hamilton & Dayton Railway Co., The Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co., and The Pennsylvania Railroad Company.
SAMUEL O. BAYLISS,
For The Cleveland, Cincinnati, Chicago & St. Louis Railway Co., The Lake Shore & Michigan Southern Railway Co., and The New York Central & Hudson River Railroad Co.
HARMON, COLSTON, GOLDSMITH & HOADLY,
For The Baltimore & Ohio and Baltimore & Ohio Southwestern Railroad Companies.

148 And afterwards to-wit: on the 18th day of April, A. D. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, Depositions of Charles A. Barnard and others, on their behalf, in said cause, which depositions are clothed in the words and figures following to-wit:

Circuit Court of the United States, Southern District of Ohio, Western Division.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL., Defendants.

Depositions on Behalf of the Defendants, Taken in Pursuance of the Annexed Notice.

Present:

On behalf of the petitioner: W. A. Glasgow, Jr., and S. T. McPherson, District Attorney.

On behalf of the defendants: Lawrence Maxwell, Jr., representing The C. H. & D. Ry. Co., The P. C. C. & St. L. Ry. Co., & The Pennsylvania R. R. Co. Samuel Bayliss representing The C. C. C. & St. L. Ry. Co., The L. S. M. S. Ry. Co. and The N. Y. C. & H. R. R. Co. Edward Colston representing The B. & O. S. W. R. R. Co. and The B. & O. R. R. Co.

Taken in the Office of the District Attorney in the Government Building at Cincinnati, Ohio, on March 9 and 10, 1905.

149 CHARLES A. BARNARD, being first duly sworn, deposes and says as follows:

Direct examination.

By Mr. MAXWELL:

Q. What is your residence, age, and occupation.

A. Cincinnati. Fortyfive. Local freight agent of the Cincinnati, Hamilton and Dayton Railway.

Q. How long have you held that position?

A. About six years.

Q. How long had you been in the railroad business prior to that ime, and in what capacities?

A. I went into the business in 1880 as clerk in a local freight ffice; afterwards was traveling auditor, lost car agent, local freight gent, general freight agent, fast freight line agent,—I guess that overs it.

Q. Have you been engaged in the railroad business at other places han in Cincinnati?

A. Yes, sir.

Q. What other places?

A. Council Bluffs, Ia.; St. Joseph's, Mo.; Kansas City, Mo.; Cleveand; Springfield, O.; Chicago.

Q. What are your duties in a general way as freight agent of the Cincinnati, Hamilton & Dayton Railway at Cincinnati?

150 A. To supervise all matters connected with the handling of the depots, all matters that pertain to dealing with the ublic at the depot.

Q. Have you charge of the handling of L. C. L. freight for your company at Cincinnati and of the accounts relating thereto?
A. Yes, sir.
Q. What is the average tonnage of L. C. L. freight at the Cincinnati depots of the Cincinnati, Hamilton and Dayton Railway Company, inbound and outbound?
A. Combined or separately, do you mean?
Q. Let us have them separately and the general average of both.
A. The outbound will average 11,720 pounds and the inbound——
Q. You mean per car?
A. Per car, yes. And the inbound 8,120 pounds, making a general average of 9920 pounds.
Q. What period does that average cover?
A. August, 1903, to July, 1904, inclusive,—one year.
Q. Is that a fair general average of one year taken with another in your opinion?
A. Yes, sir.
Q. Did you have any special motive in taking the average for that year?
151 A. No, only it was a convenient year when I made it, within the past year.
Q. And you made it with a view to ascertaining the fact for the purpose of presenting the fact to the court in this case?
A. Yes.
Q. Have you calculated the average classes of freight that are carried L. C. L. by your road?
A. I have recently, yes.
Q. Can you present a statement of the average classes of freight L. C. L.?
A. Yes, sir.
Mr. GLASGOW: When did you make that statement up, and for what period?
A. For three days, and just recently.

(The statement of the witness objected to by counsel for petitioner on the ground that it is immaterial and otherwise irrelevant.)

Q. How did you come to take three days and what three days did you take?
A. I took the 6th, 7th and 8th of June, 1904.
Q. Go on and say why you took them.
A. To be able to testify in this case as to what was the general average of the class of freight L. C. L. loaded in a merchandise car at Cincinnati station.
Q. How did you come to take those particular days in
152 June, 1904, for the purpose of arriving at a general average?
A. Because that was an average month for general merchandise business; those particular days were as convenient days to take as any other days.
Q. Is June an average month?
A. I think so, yes.

Q. And a calculation based on the month of June would be in your opinion a fair average?

A. Fair average.

Q. Was it arranged between you and the other defendants in this case that each should take certain days in that month?

A. Yes, sir.

Q. How did it come that you took the 6th, 7th, and 8th instead of some other days?

A. Because we said we would make up the figures for those days and other agents said they would make up their figures for certain other days.—No particular choice in the days which we made up.

Q. Do I understand that in order to ascertain an average the month of June was taken as a fair average month, and to each road was assigned at haphazard a certain number of days in that month?

A. Yes, sir.

Q. And the figures which you are about to produce show the average on the Cincinnati, Hamilton & Dayton Railway for those three days in June?

153 A. June, 1904.

Q. Did you make that average without comparison with the other roads?

A. Entirely.

Q. Independently?

A. Entirely.

Q. What is the average classification of L. C. L. freight at your station as thus ascertained?

Mr. GLASGOW: Wait one minute. Did you make that statement up yourself?

A. Yes, it was made up under my direction.

Mr. GLASGOW: Who made it up?

A. The clerks who have the billing and classification of freight.

Mr. GLASGOW: Did they make it up from the books?

A. Made it up from the books.

Mr. GLASGOW: Did you keep the books?

A. Personally? No. They did.

Mr. GLASGOW: This statement is objected to on the ground that the witness is not a proper person to testify to it, and on the ground that it is otherwise irrelevant and immaterial.

Q. Was this statement made up under your direction?

A. Yes, sir.

Q. By the clerks who do the actual work on the books of original entry?

A. Yes, sir.

154 Q. And are those books under your charge and supervision and kept under your direction by those clerks?

A. Yes, sir.

Q. Is that a correct statement of what your books show?

A. Yes, sir.

Q. How numerous are the books from which this statement is compiled?

A. Probably fifteen or twenty.

Q. And how numerous the entries?

A. Well, probably four or five thousand or less. I didn't count the entries.

Mr. GLASGOW: I want to ask a further preliminary question: Did you compare this statement with the books?

A. Not personally, no.

Mr. GLASGOW: You really don't know anything about whether it shows correctly what the books show or not, do you?—personally, of your own knowledge?

A. Personally, no, I do not.

Mr. GLASGOW: I renew my objection to this statement.

Q. Well, have you any doubt about the accuracy of this statement?

(Objected to by counsel for petitioner.)

A. Not the least.

Q. Was it made under your supervision while you were in the office from day to day?

155 A. Yes sir.

Q. What attention did you give to the making of the statement while it was being made up?

A. Why the figures that I detail here were drawn from the totals that the various clerks who prepared it made of their figures, and were dictated by me to the clerk who actually prepared the writing there. I took them from their totals.

Q. And where did they get their totals?

A. From the impression books of the waybills which covered this merchandise freight.

Q. You didn't yourself add up those totals to know that the addition was correct?

A. No, sir.

Q. And you didn't yourself write this statement?

A. No, sir.

Q. But you took the totals as ascertained from your books and reported to you by the various clerks who made them, and dictated the statement which is now produced?

A. Yes, sir.

Mr. GLASGOW: As I understand you, all that you know about this statement is that you told your clerks to get up this information from your books upon which to base it?

A. I told them to draw off the tonnage of the merchandise that was forwarded out of the station for these days and to submit

156 to me the result.

Mr. GLASGOW: And as I understand, whether that is correct or not so far as you know, it depends upon what they told you, and not upon what you know yourself?

A. Yes.

Mr. GLASGOW: I object again to that.

Mr. MAXWELL: I offer in evidence the statement submitted by the witness.

Mr. GLASGOW: The petitioner objects to the introduction of this statement and to each item thereof on the ground that the witness is not familiar with the books upon which this statement purports

to have been based or from which it purports to have been taken; and on the ground that it is otherwise immaterial and irrevelant.

(Said statement is hereto attached, marked "Exhibit 1" and made part hereof, p. 212.)

Q. Are you familiar with the books from which this statement was taken?

A. Yes, sir.

Q. Are they kept in your office and under your direction by clerks who are under your supervision?

A. Yes, sir.

Q. Is it a part of your daily duties to see these books and to supervise the entries that are made in them, and the clerks who make the entries?

A. Yes, sir.

157 Mr. GLASGOW: But as I understand you, whether this statement correctly gives the information which those books contain, you do not know of your own personal knowledge?

A. I do not.

Q. What do you mean by the statement that you do not know of your own personal knowledge? Do you mean anything else than that you have not done the actual additions?

A. Additions and——

(Objected to as leading by counsel for petitioner.)

Mr. COLSTON: What do you mean when you say that you don't know personally that they are correct? What do you mean by that?

A. I mean that I didn't abstract the separate items from the books, and I didn't put them on a piece of paper, and I didn't foot them up personally, and didn't put them—the figures—on this exhibit personally; but it was all done under my immediate supervision and special instructions.

Q. Are the clerks who did this employed in your office and in charge of the books from which these data were taken?

A. Yes sir, they made the original entries themselves.

Q. How many clerks were employed in making up this statement and taking the figures from the books?

A. Five.

Q. How long a time did it take them to make the statement?

158 A. You mean in the aggregate, or each clerk?

Mr. COLSTON: No, altogether.

A. Why one clerk told me about two hours and a half, and one about three—I should say in the aggregate it would probably be fourteen or fifteen hours.

Q. What are the sources from which these figures were taken?

A. From the tissue impression books of the waybills which cover the handling and accounting of the freight.

Q. Do those waybills show the items of freight that they relate to?

A. Yes, sir.

Q. Do they show where the freight is destined?

A. Yes, sir.

Q. And the amount of that freight?

A. The amount of freight.
Q. Of each package?
A. Each package.
Q. Each package of freight covered by that waybill?
A. Yes.
Q. And is it a part of the accounting system of bookkeeping of your office to have those waybills made at the time the freight is shipped?
A. Yes, sir.
Q. What is done with those waybills?
A. The waybills or the impressions?
159 Q. The waybills.
A. The waybills are forwarded to the agent at the other end of the road.
Q. For what purpose?
A. For his accounting; that he may know what is in the car and unload it and check it and see that it is there.
Q. What record do you keep in your office of that waybill?
A. Keep an impression of it.
Q. Made by letter-press?
A. Yes sir.
Q. So that the letter-press books of your office through these impressions contain the record of every shipment of L. C. L. freight from your office, the weight of the shipment, the class to which it belongs and the point of destination?
A. Yes sir.
Q. Now what directions did you give your clerks with respect to making up the statement which has just been offered in evidence?

Mr. GLASGOW: That question is objected to as directions to his clerk are not proper evidence.

A. Shall I read the instructions that I gave? I have a copy of the written instructions that I gave.
Q. Well, you can read it.
A. "Referring to the matter of classification of L. C. L. freight, you will please prepare a statement showing the tonnage of
160 each class of freight billed from Cincinnati station on June 6, 7 and 8, 1904, making a separate statement for each day, on the reverse side of a blanket waybill ruled as has been done on sample posted on the bulletin book, showing class as follows: 1st, 2nd, 3rd, 4th, 5th, 1¼ x 1st, 1½ x 1st, 2 x 1st, 2½ x 1st, 3 x 1st, 4 x 1st, 2nd — 15%, 3rd — 20%, 5th + 10%; each sheet, or two if required, for one day to be footed separately, and recap. made and signed by the bill clerk making it."
Q. Do the classes specified in that letter of instructions cover all classes of L. C. L. freight?
A. Yes sir, in the official classification territory.

(The petitioner renews objection and notes the exception to the Exhibit 1 on the same ground as above stated.)

Q. Have you made a statement based on the percentages of the

different classes of L. C. L. freight as shown by Exhibit 1, applied to an L. C. L. car of ten thousand pounds, taking the Cincinnati and Chicago rates as a basis?

A. I have.

Q. Will you please produce it? (Witness produces statement.)

Mr. MAXWELL: I offer the statement in evidence. (Said statement is hereto attached, marked "Exhibit 2" and made part hereof.)

161 Q. On such basis, what is the average revenue of an L. C. L. car of ten thousand pounds between Cincinnati and Chicago?

A. $27.20.

Q. What is the lowest revenue for a C. L. car of soap from Cincinnati to Chicago?

A. $45.00.

Q. What is the cost of handling L. C. L. freight at the Cincinnati stations of your company?

A. You mean the physical handling or the accounting also?

Q. I mean the cost of handling, including the physical handling and clerical work incident to that handling.

A. Approximately 35 cents per ton of 2000 lbs.

Q. Is any of such cost incident to handling C. L. soap?

A. No sir, except the making of the waybill and recording the waybill for one carload of L. C. soap.

Q. Does the railroad company load and unload L. C. L. freight?

A. Yes sir.

Q. Does it load or unload C. L. freight?

A. No sir.

Q. By whom is that done?

A. The shippers or consignee, whether it was in or outbound. The shipper would load the outbound and the consignee
162 would unload the inbound.

Q. What is necessary in handling L. C. L. freight, and what is actually done, that costs the railroad money in handling L. C. L. freight as distinguished from C. L. freight?

A. Do you want me to describe how an L. C. L. shipment travels through the depot physically and then through the office, do you mean?

Q. Yes. I want to know in more or less detail the items of cost and expense to a railroad company in handling L. C. L. freight which it does not incur and is not put to in handling C. L. freight, in receiving and discharging it.

A. The L. C. L. freight is brought to the depot by dray, and is first received by a receiving clerk——

Mr. COLSTON: Of the railroad?

A. Of the railroad, who checks the various packages and compares them with the shipping ticket. Later the packages are loaded by a gang of laborers in charge of a foreman. Then the car is later sealed by a man appointed for that purpose and other purposes, and the loading tickets are taken to the freight office and there distributed according to their destination to the various bill clerks who classify and waybill the freight, and of course the account as ascer-

tained from these waybills is made by another series of clerks; and while in the case of a carload——

Mr. COLSTON: What are these tickets?

163 A. You mean what we call the dray ticket?

Mr. COLSTON: Yes.

A. It is a bill of lading.

Mr. COLSTON: One for——

A. Each shipment. A shipment might comprise a great number of packages. In the less than carload shipments one ticket might have fifty items of groceries or something else on it, while if it is a carload of soap, all it would be would be 300 boxes of soap.

By Mr. COLSTON:

Q. And in the L. C. L. there may be a ticket for every package?

A. May be a ticket for every package, or there may be a hundred separate packages on a ticket that require to be classified separately, so that in one shipment there might be any number or the whole limit of classes to record and calculate.

Q. Then the physical service performed by the railroad company in the case of L. C. L. freight which it is not required to perform and which is not performed in the case of C. L. freight, is in loading, sorting, and unloading the packages.

A. Yes sir. Of course I only spoke of the shipment going out when I spoke of the detail, I didn't speak of the detail on the other end of an inbound shipment, of course.

164 Q. Give us the detail of labor and expense of handling inbound L. C. L. freight to which a railroad company is not put and does not incur in handling C. L. freight.

A. An inbound car would be brought into the freight house, switched in; the seals would be broken and recorded by a man appointed for that purpose and other purposes. Then the freight would be unloaded by the foreman in charge of the laborers, and placed in the freight house for delivery to the consignee after the waybills made by the opposite end of the road had been properly copied and recorded, and the expense bills, as we call them, made out. Before that could be done the rates would have to be revised to see that the agent at the other end had not made any mistake in his classification, and then the record of the various items would be recorded in inbound books, and the freight collected for possibly—from possibly a hundred consignees, instead of one. We would have to make out possibly one hundred and fifty expense bills, each one for a shipment; whereas in the case of a carload we would have to make out but one.

By Mr. MAXWELL:

Q. Is the railroad company liable for damage on account of the improper loading of C. L. freight?

A. No sir, it is loaded by the shipper.

Q. And is C. L. freight unloaded by the shipper also?

165 A. By the consignee.

Q. By the consignee?

A. Yes sir.

Q. So that the expense of handling in loading and unloading is peculiar to L. C. L. freight?

A. Exclusively.

Q. What percentage of the clerical work of your office and expense thereof is due to L. C. L. freight?

A. In my opinion it is from seventy-five to eighty or more per cent.

Q. In what details of clerical service and accounting does that expense consist?

A. In the recording, calculating the revenue to be derived on L. C. L. shipments.

Q. You have mentioned expense bills; won't you please state what they are?

A. Why it is the document that we receipt and give to the consignee as the evidence of the receipt of the money on L. C. L. shipments. That is known as rather a professional term, I don't know what you would call it; it is always called an expense bill.

Q. What, if any, clerical service is there in connection with tracing claims and damage reports and other items peculiar to L. C. L. shipments?

A. Well, it is in the same general proportion as the—

166 No, it is in a greater proportion than the percentage of the L. C. L. shipments to the carloads. For instance, if we made one entry for carload business and one hundred entries for less than carload business, the proportion would be one hundred to one.

Q. As I understand you the only entry that is made with respect to carload shipments is the single waybill?

A. Single waybill.

Q. Covering that car.

A. That is all.

Q. Whereas with respect to the L. C. L. carload shipment the entries would be how numerous?

A. O they would be I should judge anywhere from forty to one hundred and fifty. They would vary of course with the conditions.

Q. Does your company keep a department for the purpose of making waybills and expense bills and tracing claims and damage reports and accounts?

A. We have individual men assigned to those duties, some of them two or three of one kind or one set of duties, and some one and some two.

Q. Does this expense of thirty five cents a ton include the expense at the other end of the line in loading and unloading?

A. O no. It is merely the expense at this station.

Q. Does the station to which the goods are consigned

167 have the same expense or same methods?

A. Necessarily. They are common methods all over the country.

Q. So that to ascertain the total expense of handling an L. C. L.

shipment you would have to double the statement of thirty five cents per ton, would you?

Mr. GLASGOW: I object to that question, first, on the ground that it is leading; and second, on the ground that the witness has shown no familiarity with any other end of the line than that at Cincinnati, and cannot undertake to give the consignee end of it.

A. At least that. It might be more.

Q. Have you a knowledge of the expense of depot handling of L. C. L. freight at other places than at Cincinnati?

A. General knowledge, yes.

Q. You stated that you were in the service at Chicago at one time?

A. Yes sir.

Q. How does the expense of handling L. C. L. freight at the depots in Chicago compare with that at Cincinnati?

A. Somewhat greater.

Q. Why?

A. Because at Chicago the railroad companies in most cases take the freight off of the dray, while in Cincinnati the shipper takes it off of his own dray; and in the case of delivering goods
168 to the draymen, the railroad companies in Chicago put the freight on their drays, while in Cincinnati the drayman puts on his own freight. Then in Chicago the general cost of labor is higher; laborers and clerks are paid more per day or hour than they are in Cincinnati.

Q. Taking an L. C. L. shipment then between Cincinnati and Chicago, what would be the cost per ton of the depot handling of that shipment in receiving it at the one place and delivering it at the other?

A. From eighty to ninety cents per ton.

Q. Does that include any allowance for the investment in depots, or does it cover merely the actual expense of the depot handling of that freight?

A. Merely the expense of the handling and employés.

Q. Does it include anything for transportation?

A. I don't think I understand your question. You mean this cost that I have testified to?

Q. Yes.

A. No sir.

Q. Is there any expense incident to the switching of L. C. L. freight and peculiar to it as distinguished from C. L. freight?

A. Not material. Carload freight would have to be switched from a track where it was to be loaded or unloaded into the train, while the L. C. L. car would have to be switched into the
169 depot and out. It is just a matter of difference in a general way of the position of the tracks.

Q. Is there any expense incident to the transfer of L. C. L. freight at points of transfer between lines that is peculiar to L. C. L. freight and not applicable to C. L. freight?

A. Yes, sir.

Q. What is that expense, in a general way?

A. It would depend on the location in the town in which it occurred. Do you mean in Cincinnati, for instance, or in a general way?

Q. In a general way.

A. It would vary with the location, the party by whom it was done. In the usual way it is done by dray, but the rate varies in different cities to some extent.

Q. Then in L. C. L. freight that passes over two lines there is an expense of transferring that freight, or expense of handling it in making the transfer, at the point or points of transfer?

A. Yes, sir.

Q. And is there any such expense incident to C. L. freight?

A. No, sir, not as a rule. There might be in some cases a switching charge over an intermediate belt line, or something of that kind,—a nominal charge. I have known such a thing as that.

Q. And this expense of handling in loading and unload-
170 ing which you have given at 35 cents a ton at Cincinnati, does not include this expense of handling at points of transfer?

A. No, sir, no intermediate expense; just the terminal at both ends of the line.

Q. Will you give us a concrete case to illustrate such expense as this of a shipment, say from Louisville, Ky., to Toledo, O.?

A. You mean to say the amount of investment—amount of cost, I mean to say?

Q. I mean the actual expense of the physical handling of that shipment at the point where it is received from the consignor, where it is delivered to the consignee, and of the handling at transfer points?

A. It would be approximately one cent per hundred for loading at Louisville—this is for labor, not clerical service, I am speaking of—approximately one cent for unloading at Cincinnati by the L. & N.; four cents per hundred for the transfer by wagon at Cincinnati; one cent loading at Cincinnati; one cent unloading at Toledo. I think that makes a total of eight cents.

Q. That total of 8 cents seems according to your statement to cover the cost of the mere physical handling of that L. C. L. package?

A. Yes, sir.

Q. And does not include the clerical service incident to the handling thereof?

171 A. No, not the waybilling and accounting for it, no, sir.

Q. You have taken an instance where there was a transfer at Cincinnati from the L. & N. to the C. H. & D. Does that involve clerical service?

A. Yes, the same clerical—they would be obliged to record the waybill on which the shipment travels; the same clerical service would be involved as in a shipment out of Cincinnati proper, only it is greater in that case because we owe the L. & N. Company money, and the Transfer Company money for their service, and we have to account to them both for the money, enter it on our records, in addi-

tion to what we would have done on a shipment originating at Cincinnati.

Q. Well, does that involve an accounting and clerical service by the L. & N. at Louisville and at Cincinnati?

A. Both ends.

Q. And the C. H. & D. at Cincinnati and at Toledo?

A. Both.

Q. That is that L. C. L. shipment involves four accounts?

A. At least.

Q. And the cost of that you have not estimated in the sum of eight cents which you say covers merely the labor?

A. The labor, the labor alone.

Q. You estimate 2,000 pounds a ton in railroad figuring, I believe?

A. In merchandise. The only exceptions are pig-iron.

172 Q. So that that expense of physical labor would be how much per ton?—8 cents a hundred.

A. Be $1.60. 8 cents per hundred would be $1.60 per ton. You mean on the shipment from Louisville to Toledo?

Q. Yes. What is the rate from Louisville to Toledo third class, or twenty per cent. less than third class?

A. Approximately 17.6,—probably 17½. I haven't the exact published rate.

Mr. GLASGOW: Per hundred, that is?

A. Per hundred, yes.

Q. And what is the C. L. fifth class from Louisville to Toledo?

A. 12 cents approximately.

Q. So that the difference between C. L. and L. C. L. in that case is more than eaten up by the mere cost of physical handling?

A. Yes, sir.

Q. Would freight depots be necessary for C. L. business?

A. No, sir.

Q. Is the cost of the investment in the freight houses an incident to L. C. L. business?

A. Absolutely.

Q. And you have not included in your statements of expense anything on that account?

A. Nothing at all for realty or investments of any kind.

Q. Nor anything on account of the extra cost of transportation?

173 A. No, sir.

Q. Purely the expense of simply handling the L. C. L. freight in receiving it from the shipper, and placing it at the disposition of the consignee?

A. On local business. On through business of course the business incident to the shipment through the city.

Q. Does the item of insurance figure in L. C. L. freight?

A. In the cost? In the figures that I have given?

Q. No, not in the figures that you have given, but is there an additional cost incident to L. C. L. freight on account of insurance?

A. Certainly. As carriers we are responsible for the goods for a reasonable time to keep them in safe custody.

Mr. COLSTON: On the freight house?
A. On the freight house and on the goods.
Mr. COLSTON: Freight house and contents?
A. Yes, sir.
Q. And is that an expense peculiar to L. C. L. shipments?
A. There is an insurance carried on the equipment in which the carload shipments would be contained in the yard while it was held there, there would be some expense for insurance in that case, but comparatively small, as the risk is very small of a car burning up in the yard or the contents being damaged; then it would be only one car possibly, whereas the other might be a freight house full burned up.

Q. And in the statements you have given us you have not
174 included anything on account of the expense of insurance on the freight house and the contents of the freight house which is made necessary in the case of L. C. L. shipments?
A. Nothing at all.
Q. Do you carry insurance on your freight houses and on the contents thereof, the freight therein?
A. Yes, sir.
Q. Is that a common practice with railroads?
A. Yes, sir.

Cross-examination.

By Mr. GLASGOW:

Q. According to your idea, Mr. Barnard, carload shipments or carload traffic is much more profitable to railroad companies than less than carload traffic?
A. Yes, in a general way.
Q. I am not talking about in a general way now; I am talking about dollars and cents.
A. Well, it would depend a good deal on what the commodity was.
Q. I know, but you have been testifying as to a commodity and carload shipments or less than carload shipments; and when you spoke of a shipment from Louisville to Toledo, a less than carload shipment, and compared that with carload shipments, and said that the differences were eaten up by the expenses, you didn't say anything about what the commodity was, did you?

175 A. I spoke of a commodity classified at twenty per cent. less than third class.
Q. No, that was afterwards. That was afterwards when you were asked to give the rates. But you said that that 8 cents which you said were expenses——
A. —would apply to any commodity.
Q. —more than ate up the difference in rates between carloads and less than carloads, didn't you?
A. I don't remember that statement.
Q. Don't you recollect saying that that difference was more than eaten up by the expense?
A. The expense more than ate up the difference between a com-

modity—more than the difference between a commodity classified at twenty per cent. less than third and a fifth class commodity.

Q. I want to know, isn't it very much more profitable to railroad companies, the traffic which they carry on less than carload shipments, than on carloads?

A. The rate is higher.

Q. I am not talking about the rate; I am talking about the revenue derived from less than carload shipments; isn't it much more profitable to the railroad company than carload shipments?

A. Not in my opinion.

176 Q. It is not? Which is the greater traffic over your road, in carloads or less than carloads?

A. Carloads, in tonnage.

Q. For the year last ending what was your tonnage for less than carloads, L. C. L.?

A. Do you want it accurately?

Q. I would like to have it as near as you can give me.

A. Excuse me and I will look at my record for it. (Referring to book.) I have not that figure consolidated here. You speak of Cincinnati, I suppose?

Q. Yes, sir, I want to know in Cincinnati.

A. You don't mean the whole C. H. & D. railroad?

Q. I want to know at Cincinnati.

A. I will have to have time or assistance in tabulating this. Perhaps I can answer that question for you later in the day if it would suit you just as well.

Q. All right. Can you give me any idea about it now?

A. O, yes, I can give you an idea. I would not want to give this as testimony.

Q. How is the comparative volume of traffic from Louisville to Toledo; by way of Cincinnati?

A. Yes.

Q. That requires a transfer at Cincinnati in which the dray is used?

A. Yes, sir.

177 Q. In less than carload shipments do you charge any part of that drayage in addition to your rate?

A. Not between Louisville and Toledo, no, sir.

Q. Who don't you?

A. Because the rate is published through from Louisville to Toledo and includes the transfer.

Q. Yes, but what is that rate you say on 20 per cent. less than 3rd class?

A. My recollection is it is about 17 cents, or something of that kind.

Mr. MAXWELL: Give it right.

A. 17.6 approximately.

Q. How does that compare with an equal distance where there is no transfer? Take this question: From Chattanooga to Toledo what is the rate on twenty per cent. less than third class?

A. I know of no such rate.

Q. Don't have any through rate from Chattanooga?

A. Two classes of classification apply there.
Q. What?
A. One is the Southern and one Official.

Mr. MAXWELL: I object to the question on the ground that it is not relevant. Counsel fails to observe the purpose of the inquiry as to ascertaining the difference between carload soap and less than carload soap between these two points, and the expense incident to L. C. L. which was not a part of the cost of transporting the
178 C. L.; and it is all in official classification territory.

Mr. GLASGOW: Counsel for petitioner says that he thinks he understands what the point of inquiry was.

Q. Is there any other point in official classification territory about an equal distance from Cincinnati that Louisville is that there is a through rate from to Toledo?
A. Yes, take Jeffersonville, which would be this side of the river.
Q. That is in Kentucky?
A. No, in Indiana.
Q. Yes, that is in Indiana. Is there a through rate from Jeffersonville to Toledo??
A. Yes, sir.
Q. Is there a charge made for transfer in addition to the rate?
A. No, sir.
Q. What is the rate?
A. Approximately two cents a hundred less than the Louisville rate.
Q. Why?
A. On account of the bridge toll between Louisville and Jeffersonville.
Q. So that outside of that two cents the rate is about the same?
A. About the same, yes.

Q. You say that there is no published rate in effect be-
179 ween Chattanooga and Toledo?

A. Not that I ever heard of. The rate can be computed, I suppose you mean? There is a rate, but it is not computed.
Q. Now what is that rate?
A. It is made up from a combination of the rate from Chattanooga to Cincinnati and the rate from Cincinnati to Toledo.
Q. Now what is that?
A. O, I don't know.
Q. What is the rate from Chattanooga to Cincinnati?
A. I am not a tariff bureau. I don't know the rate from Chattanooga to Cincinnati unless I inventigate it.
Q. Well, I thought from your familarity with railroad matters as detailed in this examination I could ask you questions about tariff.
A. We have a tariff bureau in which those things are printed, to which I can refer. I will bring the bureau up here if you want to find out.
Q. I haven't asked for the tariff bureau; I merely asked you what the rate is from Chattanooga to Cincinnati if you know, and if you don't know, say so.
A. I do not.

Q. Can you furnish it?
A. I can.
Q. Please do.
A. On what commodity?
180 Q. Twenty per cent. less than third class.
A. That would be soap less than carloads?
Q. That would apply to the official classification but I don't know what it is in the Southern; fourth class, soap less than carload lots,—was that the rate you were talking about between Louisville and Toledo?

Mr. MAXWELL: I object to the questions on this subject on the ground that they are not relevant to the case nor proper cross examination.

Q. Now, Mr. Barnard, it costs 80 or 90 cents, the actual labor of handling a ton of freight shipped from Cincinnati to Chicago?
A. That is to say, the labor at both ends considered, yes, sir.
Q. How do you know what the charges are at Chicago? What experience have you had with that?
A. I was located in Chicago.
Q. How long ago?
A. Five years ago; I came from Chicago to Cincinnati.
Q. Five years ago?
A. Five or six years.
Q. As to what it is now you have no information, have you?
A. General, yes, sir.
Q. Where do you get it?
A. The fact that I have heard through—and read through
181 the newspapers of a certain amount of increased expense for labor in Chicago, is the basis of it.
Q. Then I suppose your testimony upon that line was based upon what you had gathered from the newspapers?
A. At the time I was there I knew what it was.
Q. But I am talking about now, Mr. Barnard?
A. No.
Q. Gathered from such information as you could get from the newspapers?
A. No, sir, that is not a fair supposition.
Q. Did you say so?
A. No.
Q. Then tell us what.
A. Repeat the question and I will try and answer it.
Q. I will put it now. Where and under what circumstances have you informed yourself so as to be able to testify as to the conditions at Chicago today, that the cost of handling a ton of freight in manual labor is greater than at Cincinnati?
A. Because the rate of wages is higher there.
Q. How do you know?
A. It is a matter of common knowledge.
Q. Where do you get it?
A. From conversation with other agents.

Q. Is that all? That is your entire source of information?
182 A. Yes.
Q. When did you hear an agent say, and who was he, that the rate of handling freight at Chicago per ton, the manual labor, was greater than at Cincinnati?
A. That the wages were greater in Chicago?
Q. Yes.
A. When did I hear? When I lived in Chicago and had occasion to converse.
Q. So as to five years ago you were familiar with Chicago, but are not now?
A. Yes, I am familiar with Chicago, the methods there.
Q. Don't let us split hairs; you know what I mean. I mean the handling of freight at Chicago. You are not familiar with that today but were five years ago, is that correct?
A. Yes.
Q. What were the expenses of your office last year?
A. In all respects?
Q. Yes.
A. I will have to tabulate that for you, too, after dinner,—or now, if you like.
Q. You don't know what it was then?
A. I know approximately what it was.
Q. Well, what was it approximately?
A. $70,000 to $75,000.
Q. And you say that 75 or 80 per cent. of that was due
183 to handling L. C. L. freight?
A. 75 to 80 per cent. of the clerical work was due to handling——
Q. Didn't you say that 75 or 80 per cent. of the expenses of your office was due to L. C. L. freight?
A. The clerical work, yes, sir.
Q. Well, what other work——
A. I asked you if you wanted the whole of my station account and you told me yes.
Q. Yes.
A. Now then, that is the labor account. Now the whole of the labor is due to that practically, and 75 per cent. of the clerical work.
Q. 75 per cent?
A. Of the clerical work, yes, sir.
Q. Then it would be much more than 75 or 80 per cent. of that $70,000 that you mentioned?
A. Yes, sir.
Q. Well, now, what proportion—what territory does your office cover?
A. Do you mean—in square feet, do you mean?
Q. Are there any other stations around the central station here?
A. No, it has a general location within a few blocks.
Q. Well, is not a great deal of the carload freight billed from stations other than yours in the immediate territory?
A. No, sir, not included in that expense.
184 Q. I am not talking of that. I am talking of the freight produced in this territory.

A. I don't think I understand your question. Do you mean other railroads bill freight?

Q. I mean hasn't your company other stations——

A. For billing freight in Cincinnati?

Q. In this immediate vicinity.

A. No, sir, Brighton is our nearest one,—about three miles.

Q. What proportion of the freight that leaves your office is carload freight and what proportion is less than carload freight?

A. Well, of what we bill, you mean? That we account for, or that we handle?

Q. Handle; I am talking about what you handle at this office.

A. The relative proportion of tons of freight in carloads and the less than carloads I should — is about ten to one.

Q. Ten in carloads to one less than carload?

A. Yes, sir, approximately that.

Q. How do your revenues compare between less than carload shipments and carload shipments?

A. You mean the gross income?

Q. Yes.

185 A. I have never figured that.

Q. Can you do it?

A. O, in time, yes.

Q. Could you do it without any great amount of labor?

A. It would be impossible. It would take me—I don't know how long a period you want, but it would take me possibly a year or two to get the whole business up myself.

Q. O, well, I don't care about giving you a year's job, or anything of that kind.

A. It is not impossible.

Q. You say that the average outbound freight in less than carload is per car 11,720, and the inbound 8,120?

A. Yes, sir.

Q. Making a general average of 9,920?

A. Yes, sir.

Q. Didn't you have to get at all the less than carload tonnage handled in order to arrive at that proportion?

A. Yes, sir.

Q. So that it is not such a big job then to get at what less than carload tonnage you handle?

A. We keep the tonnage but don't keep the revenue.

Q. You talk about tracing and damage; looking after damage claims and tracing reports, all of that, applies to carloads as well as less than carload shipments?

A. One of those clerks might be employed on carload shipments, yes, sir, sometimes.

186 Q. Is just depends on where the damage occurred and what car is lost, doesn't it?

A. Yes.

Q. Now let's take that 35 cents a ton as the expense of handling less than carload shipments at Cincinnati; how did you arrive at that? What are the items making it up?

A. The salary of the various employés at the station who are en-

gaged in loading and unloading and accounting for the shipments—Do you want to have reference to the various titles of these people?

Q. I want to know what are the items making up the 35 cents; how do you get at it?

A. For instance, we figure the cost of the depot departm*ent*, as we call it, and take the number of tons that they handle; cost so much money to pay them for their labor, and they handle so much, and therefore it costs so much on a ton, average per ton, or per hundred, to do that part of it. That figure is in the neighborhood of twenty-one or twenty-two cents per ton for that part of the work; while you then add to that a percentage of the general clerical expense in the office for accounting, etc.,—would make the gross amount of cost.

Q. How do you arrive at that percentage in the office to be added?

A. It is an estimate,—my opinion.

187 Q. How do you get at the estimate?

A. Well, the way estimates are usually gotten at, I suppose.

Q. O no, there are a thousand different ways of making an estimate.

A. An estimate as I naturally thought from its name, not accurate; it is an estimate.

Q. I understand; but you have to have some basis to make an estimate on, don't you?

A. Experience, what I see every day.

Q. Well, then what do you see every day? What is your experience every day upon which you make this—is it a guess?

A. Yes.

Q. A guess?

A. If you please to call an estimate a guess it is a guess.

Q. No, there are some estimates that are not guesses, are not there?

A. I don't know as I ever saw one.

Q. You did not?

A. An estimate to my mind would necessarily be a guess.

Q. Have you no basis upon which to go except just the vague statement like you have given me?

A. O no, I have figured it on other occasions and other circumstances, but not particularly the C. H. & D. business.

188 Q. You have never figured the C. H. & D. business?

A. No.

Q. Therefore any statement you make about it is a mere guess?

A. Mere guess.

Q. Is that true also of the 21 or 22 cents that you arrived at as part of that expense?

A. It is not.

Q. How did you arrive at that?

A. By the tabulation of the figures.

Q. What does that cover?

A. Covers the labor.

Q. You say that labor is chargeable to less than carload shipments?

A. Yes, sir.

Q. Don't they do anything else than that?

A. No, sir.

Q. Have you any check, or any way of telling, when a carload of soap is loaded—or verifying the report to you as to what is in that car?

A. Not if it is loaded by the shipper.

Q. You have no way of telling?

A. No, sir.

Q. Have you any way of telling whether it is overloaded or underloaded?

189 A. Put it on the scales and weigh it.

Q. Have you any way of telling how many boxes are in that car?

A. No, only by its weight, 30,000 pounds, and our general knowledge is that soap weighs 60 pounds to the box; we would have a general knowledge of what ought to be in the car.

Q. Suppose the shipper reports that he has put so many boxes of soap in that car and it starts out, and the consignee reports that it was not in there when it arrived; have you no way of checking up to see whether it ever was delivered to you?

A. No, sir.

Q. You said that there was a cost of switching, or transfer at transfer points, which applied to less than carload shipments and which did not apply to carload shipments. Will you explain that to me?

A. I don't remember that statement or I don't understand your question.

Q. Didn't you say there was an expense incident to the transfer at junction or transfer points of less than carload shipments which did not apply to carload shipments?

A. Yes, that is wagon transfer.

Q. Wagon transfer?

A. Yes, that is the 4 cent expense that I told you of.

Q. What other points on the C. H. & D. road does that

190 apply to except Cincinnati?

A. Any point where we interchange.

Q. Of course; that is in a circle. But I want to know what the points are?

A. Do you want me to name the junction points?

Q. I want to know the points where there is that expense for wagon transfer other than Cincinnati?

A. Well, there is Dayton, Hamilton, Lima, Toledo, Indianapolis, Troy, Piqua, Sidney, Washington Courthouse, Connorsville,—I think that is a good share of the junction points.

Q. There are other points, however, that this wagon transfer that you speak of is an incident to less than carload shipments?

A. Yes.

Q. At any of these points is the transfer charge paid by the shipper in addition to the rate?

A. Not that I know of, where the through shipment and through rate applies. No.

Q. At none of those points is that paid by the shipper?

A. No, sir, not that I know of.

Q. Is there any other point that you can give as an example similar to the one that you spoke of from Louisville to Toledo?

A. Where there would be an incidental transfer expense, you mean?

191 Q. I am not talking about where there would be; I am talking about where there is.

A. To give you some other point, any point that—where the through rate published—Take Memphis, or Lexington, any point south of the river where it would necessarily be handled from the depot of the road bringing it into Cincinnati to the depot taking it out.

Q. Is there any system of loading less than carload shipments into a car for the purpose of trying to avoid that transfer?

A. No, not now, except I think there is between the Cincinnati—or between the Pennsylvania and the L. & N., because it is merely across the street. They just load the merchandise on this side and switch it across the street to the other freighthouse, the outbound house. That happens.

Q. Isn't there any system in effect by which if freight from Louisville were to be shipped to Cincinnati in less than carload lots that effort would be made as far as possible to load a car going to Toledo with shipments less than carload lots?

A. That was abandoned years ago as too expensive.

Q. It was? So that that is not done at all?

A. Not as a rule.

Q. So that it doesn't make any difference in loading at Louisville whether they have enough freight to fill a car going to Toledo, they do not necessarily try to put that into a car to try to avoid the

192 Cincinnati transfer?

A. No, it is loaded in a general Cincinnati house car and goes to Cincinnati. They may load a dozen a day, and the shipment would go in any one of the cars.

Q. Does all of the freight destined beyond Cincinnati from Louisville have to be transferred at Cincinnati by wagon——

A. Yes, except on that——

Q. ——when it is made in less than carload lots?

A. Yes, except in the instance I spoke of between the L. & N. and the Pennsylvania, where they do load a car, track car I speak of.

Q. The Louisville situation then, is that the same as other points within this official territory?

A. Yes. You mean as to the loading?

Q. Yes.

A. The situation at Louisville as to the loading, yes, in a general way.

Q. And as to the transfer in Cincinnati?

A. Yes.

Q. So that all of the freight passing through Cincinnati which is less than carload lots, going from a point in official classification territory through Cincinnati, all of it is transferred at Cincinnati?

A. True. I think it is.

Q. There is no way to avoid that?

193 A. Yes, it could be loaded in a car and switched around, but it would cost more money than it does to pay 4 cents a hundred.

Q. So that the switching which you speak of would cost more than the transfer?

A. The general expense incident to the switching, yes.

Q. How about carload lots that pass through here, don't you have to switch them?

A. They switch from the outside yards directly across; don't come in the city at all.

Q. Does that cost as much as it would to transfer?

A. It would cost as much to switch a carload from two rails adjacent to each other as it would to transfer it by wagon, do you mean?

Q. I asked you whether it cost as much to switch a car as it did to transfer its contents by wagon transfer.

A. Why no.

Q. That is what I want to know. Then why is it if you have a car of freight all going beyond Cincinnati, why is it that you unload it in Cincinnati and re-load it again instead of switching?

A. Because we don't have the freight.

Q. What do you mean?

A. We don't have enough freight to make a straight carload of less than carload shipments as a rule.

Q. I am talking about a car loaded at Louisville in less

194 than carload lots all bound for a point beyond Cincinnati.

A. Yes, by one road.

Q. By one road, by the Louisville and Nashivlle and your road.

A. Yes.

Q. Why is it that you unload that freight at Cincinnati instead of transferring or switching the car taking it beyond Cincinnati?

A. Because there wouldn't be enough freight in Louisville to justify the loading of an exclusive car through to Cincinnati and then switching it over to the C. H. & D. road.

Q. You didn't catch my question. My question was if the car was loaded with freight destined to a point beyond Cincinnati from Louisville, why, with that car loaded to a point beyond Cincinnati,—when you get it here why don't you switch it? Explain it. Why don't you switch it and send it on your road to its destination rather than transfer it by wagon here?

A. Why because the car doesn't exist, that is the reason.

Q. No such car is in existence or ever has been?

A. Not that I know of.

Q. You don't know of any car that was ever loaded at Louisville with freight destined beyond Cincinnati except those that were carload shipments.

195 A. No, sir.

Q. You have insurance on your carload shipments, that covers loss on carload shipments just as well as loss on less than carload?

A. Fire insurance, yes.

Q. Haven't you accident insurance?
A. No, sir.
Q. Haven't you any insurance on your road that covers damage to a load of grain if it goes down a bank?
A. That would depend possibly on the circumstances. We carry fire insurance on burning it up.
Q. Do you carry any accident.
A. Not that I know of.
Q. You do on equipment?
A. Yes, but—I am not so thoroughly familiar with the equipment accident insurance; there may be some; I don't know of it however.
Q. Is there any expense incident to carload traffic which is not applicable to less than carload?
A. Not that I know of.
Q. And you are certain that in the business of your road the carload traffic is much more profitable than less than carload traffic?
A. Yes, sir.
Q. You are also satisfied as illustrated by the Louisville incident that you have detailed, that the expense of handling less
196 than carload shipments reduces the revenue far below what you would get on carload shipments?
A. Yes, sir.
Q. Now I ask you to bring something——
A. Yes, I have a memorandum, I want to see if it is right; you wanted the rate on carloads and less, Chattanooga to Toledo; a statement of the expenses of the station in gross, and for clerks separately,—is that what you wanted?
Q. Yes, and one other thing I wanted was the tonnage handled in your station.
A. O yes, the gross tonnage as compared with the house tonnage; that is what you wanted. That is for the year 1894.
Q. I would like to have if you can give me, the gross tonnage handled at this station, carload and less than carload, and then I would like to have the less than carload tonnage.
A. I will give you the two items. I will give you the gross and the less than carload.
Q. What is the average loading capacity of a car of merchandise?
A. You mean cubical or the——
Q. Tonnage.
A. The capacity you mean of a box car, how much it would carry?
197 Q. I say what is the average in pounds, the loading capacity, of a car?
A. It would depend on the size of the car and the capacity of the car. I can't understand that question.
Q. How did you do it here (referring to "Exhibit 2")? "The following figures show that by using 10,000 lbs. as the average loading capacity of a car"?
A. The average loading, not the capacity.
Q. That is what I said.
A. The average loading of the car is 10,000 lbs. about.

Q. You say the "average loading capacity."

A. The word "capacity,"—I don't remember that word in there.

Q. Well, it is there. I wasn't so far off in following the language which you had given.

A. The average capacity of a car would be about what you can get in it, about 10,000 lbs.

Q. Suppose you are loading it with soap, what is the usual capacity of a car on your road?

A. O, I think that the average capacity of C. H. & D. cars would be above forty five thousand and below fifty.

Q. Above forty five and below fifty?

A. I mean the capacity, carrying capacity, safe capacity.

Q. You mean on an average you could load forty five to fifty thousand pounds of soap in a car?

198 A. I don't think you could put it in the car, but that is what the car would carry. I think—O, thirty-five, thirty-six thousand I think is about a reasonable carload of soap.

Q. Well, this (Exhibit 2) I believe given the earning capacity—earning of the car based upon an average loading capacity of 10,000 lbs. between Cincinnati and Chicago; and you say that the average loading capacity is from forty-five to fifty thousand?

A. In weight.

Q. Well, that is pounds,—is weight.

A. Well, of some commodities—you can put a great deal of pig-iron in a car but you can't put so many feathers.

Q. I understand that. That is not new information.

A. I thought not.

Q. I say that your statement here is based upon 10,000 lbs. as the loading capacity of a car between Cincinnati and Chicago.

A. The word "capacity" should not be used there properly.

Q. What is the average loading between Cincinnati and Chicago?

Mr. MAXWELL: Of L. C. L.?

Mr. GLASGOW: Yes.

A. I should judge somewhere between fifteen—fifteen thousand pounds.

199 Q. Why in making up this statement then didn't you take what is usual and what is actually the average loading between Cincinnati and Chicago?

A. Because I wanted to get at what was the general average of a merchandise car. That was merely as a basis.

Q. So that the real earning capacity of your cars from Cincinnati to Chicago on less than carload shipments is far in excess of these earnings that you have put down here?

A. It might be in some cases, yes, sir, and might be less.

Q. Isn't it as a matter of fact as an average far above this?

A. An average car between Cincinnati and Chicago would contain more freight than 10,000 lbs.

Q. And your earnings are very much in excess of this?

A. In the proportion of that.

Q. But very much in excess?

A. O yes, if there was more in the car there would be more weight.

Q. That is what I am trying to get you to put on the record, the
t that there is more in the car than you have used.
A. In a Chicago car sometimes, but not in an average car.
Q. Now I will have to go over that again. The amount that you
load from Cincinnati to Chicago of less than carload ship-
0 ments you say is on an average between fifteen and what?
A. Seventeen or eighteen thousand.
Q. Seventeen or eighteen thousand pounds?
A. Yes.
Q. That is what you actually carry?
A. Yes, sir.
Q. —in a car on an average, between Cincinnati and Chicago?
A. Yes, sir.
Q. At the rates that you received for that freight the earnings of
ur cars are far in excess of the earnings that you have put on this
per, are not they?
A. Yes, they would be in excess of it, yes, sir.
Q. What is this third less twenty per cent., "0644"?
A. That is twenty per cent. less than third class.
Q. That is six cents?
A. Per cent., this is the per cent. of the general average of the
ading. Take from "Exhibit No. 1" for instance, you see that is
e number of pounds. This is the per cent. of the gross.
Q. Is 1,732,295 the total tonnage carried?
A. For the three days, yes; and of that so much was first class, so
uch was second class, and this is the per cent. of the whole.
Q. So that six per cent. and a fraction of the freight carried on
those three days was third class less twenty per cent. traffic?
01 A. Yes, sir.
Q. And what was the rate on that?
A. Twenty cents.
Q. And you calculate that this six per cent. and a fraction of
affic carried those three days at twenty cents makes the earning
apacity of the car what?
A. No, there was $1.29 worth of that class of freight in a car that
ld average $27.20. There should be $1.29 worth on that basis of
at class of freight.
Q. This is altogether speculation?
A. Certainly.
Q. I mean in "Exhibit 2"?
A. Not speculation; it is a statement of the percentage of the
siness that was actually handled. There is no speculation about it.
ut if a car did weigh ten thousand and did travel to Chicago it
ould earn that much.
Q. Yes, but the fact is that your cars do weigh more on an aver-
ge than ten thousand?
A. To Chicago.
Q. To Chicago; and your earnings are in fact more?
A. More than that.

Redirect examination.

By Mr. MAXWELL:

Q. You have stated that your L. C. L. cars from Cincinnati to Chicago contain on an average from fifteen to sixten thousand
202 pounds——

Mr. GLASGOW: Seventeen or eighteen.

A. From fifteen to seventeen or eighteen.

Q. Whatever average it was; how about your less than carload cars to other points?

A. O, they would average very much less.

Q. Taking all your L. C. L. cars what is the average load?

A. Approximately 10,000 lbs.

Mr. GLASGOW: The word "approximately" "covers a multitude of——"

The WITNESS: It is a fact.

Q. What do you mean by "approximately"? Give us the accurate number of pounds to a car.

A. 9920 pounds for one year.

Q. How does the L. C. L. traffic between Cincinnati and Chicago compare with the L. C. L. traffic between Cincinnati and other points on your road, that is the general traffic?

Mr. COLSTON: Is the proportion large or small?

A. Very large.

Q. How does the average loading of L. C. L. cars, out-bound and in-bound at Cincinnati, which you say for a year average 9920 lbs. per car, compare with the average loading at smaller stations on your road?

A. In my opinion our average would be considerably higher than the smaller stations.

203 Q. Why so?

A. Because we have a greater volume of less than carload business delivered to us, so that we are able to load a car comparatively full. Sometimes we have to load two or three cars for one station so that we load them as full as we safely can.

Q. Is Cincinnati the largest station on your road?

A. Yes, sir.

Q. And on account of the volume of the L. C. L. traffic at such a large station you are able to have larger tonnage in L. C. L. cars?

A. Yes, sir.

Q. You have referred in your cross-examination to a part of the expense of handling L. C. L., the clerical service incident to loading and unloading, as an estimate, and again as a guess. On what basis of the total cost of the clerical service of your depot do you estimate the clerical cost of L. C. L. shipments at the figure you gave?

A. My impression of the time that each clerk was enployed in doing the general work.

Q. But what per cent. did you take of the cost of the clerical operation of your Cincinnati depot?

A. I don't think I understand the question.

Q. Did you take fifty per cent.?—eighty per cent?

204 A. Seventy-five per cent. is the per cent. I took. I thought it took them three quarters of their time fully to attend to less than carload business.

Q. Well, you have been in charge of that depot for six years?

A. Yes, sir.

Q. Observing it daily, have you?

A. Yes, sir.

Q. You have had long experience in the railroad business, observing the operations of the handling of L. C. L. freight at stations?

A. Yes. Agent of other companies.

Q. Now what do you say as to the fairness of that estimate of seventy-five per cent. which you ascribe to the cost of the clerical service incident to the L. C. L. business?

A. I can say it was altogether under rather than over the real expense, but I haven't any actual figures to take. I should not be surprised if it would actually go eighty or eighty-five or possibly more per cent.

Q. Is it your judgment from your observation and experience as a man having charge of that department of the railroad for many years that the percentage of the clerical cost of handling L. C. L. freight is more than seventy-five per cent. of the clerical expense of the freight depot?

A. It is, sir.

205 Q. Are you familiar with the custom which you say prevails at Chicago of putting the expense on the railroads of taking L. C. L. freight from the drays?

A. Yes, sir.

Q. Is it a fact that that is the custom at Chicago?

A. Yes, sir.

Q. Have you seen it?

A. Yes, sir.

Q. Is it a fact that it is the custom of the railroads in Chicago to place the incoming L. C. L. freight on the trucks of the consignee?

A. Yes, sir.

Q. Have you seen that?

A. Yes, sir.

Q. Do you know it to be a fact?

A. Yes, sir.

Q. Is the cost of the labor of men who handle shipments at Chicago, the rates paid them, greater or less than at Cincinnati?

A. My experience is that it is greater per hour.

Q. How was it when you were in Chicago?

A. I think at that time it was the same that it is here now, but the wages have been raised here in Cincinnati and have been more raised in Chicago.

Q. Now you have been asked how you know that. Do you come in contact daily with railroad men and operative men on the railroad.

206 (Objected to as leading by counsel for the petitioner.)

A. Not daily, no.

Q. Frequently?

A. Yes, sir, frequently.

Q. And it is a part of the common knowledge of railroad men with respect to the comparative rates of labor in Chicago and Cincinnati?

(Objected to as leading by counsel for petitioner.)

A. Common knowledge, I think.

Mr. COLSTON: Established by the union.

Mr. GLASGOW: Are you a member of the union?

A. No. No, won't let me in.

Q. You have referred to the expense of wagon transfer at certain points. Is there at other points an expense of transferring by truck from one road to another of L. C. L. freight?

A. You mean from car to car?

Q. Yes.

A. When they are placed beside each other?

Q. Yes.

A. I don't know of any where they are just exactly adjacent in that way. There might be.

Q. Do you know of cases where they are sufficiently ad-
207 jacent to avoid a wagon and enable them to employ trucks?

A. I don't know of any.

Q. On your road?

A. No, sir.

Q. Mr. Glasgow has asked about L. C. L. business between Louisville and Toledo. Do you mean to say that there is no L. C. L. business between Louisville and Toledo?

A. That was handled in through cars.

Q. Is there much L. C. L. business between Louisville and Toledo?

A. O, yes, considerable.

Q. But as a matter of fact it has never been found practicable to send single L. C. L. cars from Louisville destined to Toledo?

A. I never heard of one.

Q. How is the L. C. L. business between Louisville and Toledo daily conducted?

A. By loading in a car at Louisville and unloading at Cincinnati, transferring it across the city by wagon, loading it at Cincinnati, unloading it at Toledo.

Q. The figures which you have given us will enable us to ascertain the revenue derived from L. C. L. shipments between Louisville and Toledo as compared with C. L. shipments of soap?

A. Yes, sir, the L. C. L. and C. L. shipments of soap, that is to say, twenty per cent. less than third and fifth class rate, yes,
208 sir.

Recross-examination.

By Mr. GLASGOW:

Q. Mr. Barnard, suppose you had 10,000 tons of freight——

A. "Tons," you said, not "pounds?"

Q. Yes, tons—for shipment from Louisville to Toledo, carload shipment; and then you had a like amount of traffic in less than

carload lots; do you mean to say that the revenue of your road would be less on the less than carload shipments, or L. C. L. shipments, than on the carload traffic?

A. They wouldn't be less per hundred.

Q. Would there be less revenue to your road?

Mr. MAXWELL: I ask the counsel whether he means less net revenue after taking out the expense of handling, and considering the average loading.

Mr. GLASGOW: I will take it first on the revenue to his road.

A. Well, the net revenue or gross revenue?—which?

Q. Well, put it both.

A. Why if it were—if the rate per hundred was greater——

Q. Well, we have what the rates are; there is no use of speculating. You have what the rates are and have stated what they are. There is no use of speculating over what the rates are.

A. Yes, the rate on less than carload is approximately
209 17.6 while the rate on a carload is 12 cents, therefore on the same number of pounds the revenue would be greater on the less than carload shipments.

Q. Yes, the gross revenue?

A. On the same number of pounds.

Q. That is what I have said, ten thousand tons in one case is the same number of pounds as in the other?

A. Yes, the gross revenue would be greater on the less than carload.

Q. Now about the net revenue, how would that be?

A. The net revenue would be less.

Q. Less on what?

A. On the carloads. On the less than carloads it would be less, the net revenue.

Q. You would make less on your less than carload traffic than you would on your carload traffic?

A. Yes, sir.

Q. Is that true of all the traffic on your road, comparing like tonnage to like tonnage?

A. Not where there is no intermediate expense, there wouldn't be so much less.

Q. Then the case that you have put where the expense runs up in the transfer at Cincinnati is not the usual case, is it?

A. It is not an unusual one.

210 Q. Well, now answer my question, won't you, please: that is not the usual case, is it?

A. No, because all the traffic on the road does not travel between Louisville and Toledo.

Q. Can you answer my question?

A. It is not the usual case.

Q. That is what I asked you,—it is not the usual case. Then the illustration that you used is one out of the usual course of business on your line?

A. No, it is quite usual. It is not universal.

Q. Didn't you just this moment say that it was not the usual case?

A. No, it is not the universal case.

Q. No, I said it was not the usual case.

A. It is not an unusual case,—can I put it that way?

Q. I will ask you my question again and get you to make the same answer that you did before. The case that you have illustrated between Louisville and Toledo where the extra charge occurred at Cincinnati is not the usual case with traffic on your road?

A. Between all points, I understand you now?

Q. Isn't that clear enough?

A. No, it is not to me.

Q. You can't answer it then?

A. I don't think I can as I understand that.

211 Q. You know your road very well, don't you?

A. Yes.

Q. About how long have you been on it?

A. About six years.

Q. Is it usual for traffic on your line to be subjected to drayage charges when it is shipped in less than carload lots?

A. When it passes through Cincinnati it is.

Q. Yes, but *what* it doesn't pass through Cincinnati?

A. In all cases, no.

Q. Does all traffic that goes over your line pass through Cincinnati?

A. No; a very large share of it though.

Q. A very large share of it?

A. A considerable share.

Q. What proportion?

A. I haven't figured on that.

Q. Then if the circumstances which you have detailed as to Cincinnati and which you have said is not the usual event in moving traffic in less than carload lots, do not occur, the business which you do in less than carload lots nets your company very much in excess of carload shipments, doesn't it?

A. The rate on less than carload shipments is greater in all cases than the rate on carloads.

Q. My dear sir, I can go to the tariff sheets that you filed and get what the rate is.

212 A. I suppose so.

Q. But I asked you the revenue to your road, the net revenue to your road, is much more in the instance I have cited than it is in carload shipments, isn't it?

A. It is more as a rule.

Q. Isn't it a good deal more?

A. It is a relative question perhaps just how much a "good deal" and "much more" is. It is more, certainly.

Q. Well, it is considerably more, isn't it? It is not an immaterial matter? It is considerably more, isn't it?

A. Do you mean a fixed percentage more? Our views might not agree.

Q. Well, give us your views.

A. It is the gross revenue you are speaking of, the gross?

Q. No, I am talking about the net revenue.
A. Pound for pound, you mean?
Q. Of course; pound for pound.
A. I should fancy it was fifteen to twenty per cent. more.
Q. Isn't it more than that?
A. It is in my opinion not more than that.
Q. The rate on soap is as 17.6 is to twelve, isn't it, the rate?
A. Yes.
Q. Well, now wouldn't it be just as much proportionately as those rates compare, where you didn't transfer as you do
213 at Cincinnati?
A. Let's see. No, (after figuring), it would be about 15.6 to twelve.
Q. So that it would be about twenty five per cent. then, would it, more?
A. Possibly twenty to twenty-five per cent. more.
Q. Well, 3.6 is more than twenty-five per cent. of twelve, isn't it?
A. No, sir. More than twenty-five per cent?
Q. Of twelve?
A. No.
Q. 3 is twenty-five per cent. of 12?
A. O, yes.
Q. It is more than twenty-five per cent.?
A. Yes, more than twenty-five per cent., yes. More than twenty-five per cent.
Q. Have you got a map of your lines here?
A. Not here, no.
Q. When you come back after lunch could you conveniently bring one?
A. Yes.

(And thereupon a recess was taken until 3 P. M.)

214 THURSDAY, *March* 9, 1905—3 p. m.

Re-cross examination of CHAS. A. BARNARD resumed.

By Mr. GLASGOW:

Q. Mr. Barnard, suppose a shipment from Ironton to Toledo in less than carload lot by your line, would the same facts as to the charges apply on that shipment as those which you have used in your illustration from Louisville to Toledo?
A. No, there would be no transfer, no wagon transfer.
Q. Supposing a shipment by way of the B. & O. S. W. line from Louisville to some point on its line, or on the line of the Baltimore & Ohio, would the same facts that you have given in your illustration as to Louisville apply as to expenses of transfer?
A. No, sir.
Q. Why?
A. Because if it was transferred it would be in their own depot from car to car.

Q. Suppose there was a shipment on your line from Cincinnati to Toledo, would it apply?

A. No, sir.

Q. For the same reason you have given just now?

A. Same reason.

Q. Suppose a shipment from Louisville to Chicago not by way of Cincinnati, would it apply, the illustration you have given as to expense?

215 A. Well, that would depend on what route you used. If you used the Monon Route, for instance, it would not apply.

Q. Which is the Monon?

A. Here is the line down here (indicating on map) to Louisville.

Q. What is that, the Chicago, Indianapolis & Louisville?

A. Chicago, Indianapolis & Louisville.

Q. That would not apply if you used it that way?

A. No, wouldn't apply from Louisville to Chicago.

Q. Then if you used it from Indianapolis to Chicago it would not apply?

A. No, sir.

Q. Cincinnati to Cleveland it would not apply, the illustration you have used?

A. No, not by way of the Big Four road. It is a direct line having a terminal in both places.

Q. Would it apply if the shipment were given to you?

A. Going to Cleveland, it would in some cases; if it went by way of Toledo it would.

Q. Suppose a shipment was made from Dayton to Toledo, it wouldn't apply, would it, the illustration which you have given?

A. No, sir.

Q. The illustration which you have given is a peculiar condition due to the transfer of freight from the Louisville and Nash-

216 ville to your road in Cincinnati, isn't it?

A. No, sir, not any more from the Louisville & Nashville than any other road south of the river.

Q. Well, any other railroad south of the river transferring to your line?

A. To any line in Cincinnati.

Q. The B. & O. Southwestern wouldn't have that trouble?

A. If the shipment came out of Louisville by way of the B. & O. S. W. and was delivered for shipment to Toledo it would apply.

Q. Suppose it was delivered to the B. & O. Southwestern?

A. For Toledo?

Q. Any other through point.

A. If it was in a through car there would be no transfer.

Q. Suppose it was any other line than yours, would it apply?

A. Certainly, it would apply to the Big Four, apply if it went to the Pennsylvania from the B. & O.,—well, any other way you want to send it; C. C. & L. Railway it would apply.

Q. Is there a physical connection between the Louisville & Nashville and your road in Cincinnati?

A. Yes, sir. Yes and No. You can run a car from the Louisville & Nashville to the C. H. & D., but it isn't used.

Q. What do you mean?

A. There is a physical connection, but between the Louis-
217 ville & Nashville and the C. H. & D there is no connection.

Q. Now if you will explain that to me I will be very glad because I don't understand it.

A. Well, the Louisville & Nashville has an end theoretically and actually I think on the other side of the river. To reach the C. H. & D. Railroad they go over the Chesapeake & Ohio bridge, which they do not own, and then over the tracks of the Big Four Railroad, which they do not own, so that it has a physical connection and still not a connection between the L. & N. railroad and the C. H. & D.

Q. My question was is there a physical connection between the Louisville and Nashville and the C. H. & D.?

A. I have answered your question.

Q. Do those two roads unite or connect?

A. They do not with their own rails.

Q. So that the illustration you used was one that was applicable to the C. H. & D.'s business at Cincinnati, and was not a general illustration which could be used all over official classification territory?

A. It could under like circumstances.

Q. But the circumstances do not exist, do they?

A. I think they do, yes, sir.

Q. Haven't you just now told us a number of places between points that they did not exist in that territory,—the condition
218 that you speak of?

A. They do not.

Q. Suppose there was a shipment from Chicago to New York, would it apply?—L. C. L.

A. Yes, sir, by way of Cincinnati.

Q. Yes, but you know they don't always have to go that way.

A. We are talking about a condition, you asked me about Cincinnati.

Q. If it went outside of Cincinnati then?

A. Yes, it might apply if it went through any terminal.

Q. It might apply?

A. Yes, sir.

Q. I am asking what does apply.

A. Will you specify the route you want to use?

Q. Well, you specify the route it does apply.

A. It applies via Cincinnati; I specified that one.

Q. Is there any other?

A. It might by any route.

Q. You do not know that it does?

A. I do not know that it does or does not.

Q. From Toledo to Cleveland your illustration would not apply, would it?

A. By the way of the Lake Shore, no, sir.

Q. To New York from Toledo it wouldn't apply, would it?

A. It might. It would depend on where it was transferred.

219 Q. I am asking does it on all the routes or all the lines in official classification territory between Toledo and New York?

A. I don't know whether it does or not.

Q. So that the illustration you did use was one that you know applied at Cincinnati?

A. Yes, sir.

Q. You don't mean to say that that illustration is applicable to the whole of the official classification territory outside of Cincinnati?

A. Under the same conditions, yes, sir.

Q. Are the conditions the same?

A. Not always, no, sir.

Q. Are they the same?

A. Not that I know of.

Q. Then it doesn't apply to all of the official classification territory outside of Cincinnati?

A. No, I have stated a number of instances that it did not apply to my knowledge.

Q. Then it does not, does it?

A. Does not apply universally, certainly not.

Q. It was the peculiar condition incident to Cincinnati that you referred to, wasn't it?

A. Not at all. I referred to a condition that was incident to Cincinnati, but nothing peculiar to it.

Q. Tell me where else it exists.

220 A. It can exist at any terminal where the depots are not the same and the freight is transferred from one to another by wagon transfer.

Q. Tell me where it exists in official classification territory.

A. St. Louis, Chicago, Buffalo, Cleveland, and anywhere that the two railroads are not the same system.

Q. It depends on what system you ship by as to whether it applies?

A. Yes,——

Q. There are systems by which shipment can be made as to which it doesn't apply, are there not?

A. Yes.

Q. So that it depends upon the several suggestions which you have made as to whether this illustration you have used would be applicable to any part of the official classification territory outside of Cincinnati?

A. Yes, sir, depends on the circumstances entirely.

Q. To the business that you do it would be applicable only—the illustration you give as from Louisville would only be applicable to such tonnage, L. C. L. tonnage, as was carried from Louisville over the Louisville & Nashville to your road?

A. No, I explained this morning that it applied to any other road also in Cincinnati where they would have to use the wagon transfer.

221 Q. It applies to the tonnage which you get from the Louisville & Nashville Railroad, doesn't it?

A. No, might to tonnage from the Cincinnati Southern.
Q. Doesn't it apply to the Louisville & Nashville?
Q. You said "only."
Q. No, I didn't. I said it applies to the tonnage which you get from the Louisville & Nashville Railroad, doesn't it?
A. It applies to the Louisville & Nashville, yes, sir.
Q. And applies to any other tonnage that is brought to you in Cincinnati, doesn't it?
A. Yes, sir.
Q. This column headed "clerks" shows what, 38,701.25, in the paper which you filed marked——
Mr. MAXWELL: I beg your pardon; we have not filed anything.
Q. Yes, which you have given to me, marked "C. A. B. No. 6." In the paper which I hold in my hand marked "C. A. B. No. 6, what does the column headed "clerks" mean?
A. That represents the clerks who do the accounting and the entering the upstairs office that I spoke of.
Q. What is the total of that?
A. $38,701.25 for eleven months.
Q. Eleven months?
A. One month I have not got here.
Q. That shows all that it cost you for clerical work?
222 A. Doing the clerical work.
Q. At the Cincinnati station?
A. Yes.
Q. What does that column "Depot tonnage" mean?
A. That is the L. C. L. freight handled.
Q. Have you got anything that will show what the expenses of that office were, total expenses, in addition to the clerks?
A. You mean for one month?
Q. For that time, for a period.
A. I will have to abstract that then. For January, 1904, the total expenses were $8,071.85.
Q. That was the——
A. ——total expense.
Q. That includes clerks and everything?
A. That includes the whole thing. Of course to deduct the clerks would make the difference.

For February	$8,140.70
For March	8,883.15
For April	8,630.70
For May	8,479.15
For June	7,874.80
For July	7,490.30

Q. Leave out August because you left it out here.
A. Yes, I haven't got it.

September	$7,699.15
October	7,895.75
223 November	7,922.65
December	8,135.45

Q. For the eleven months that makes, as I understand, a total expenditure of $99,203.65. You have not added that up?

A. No, sir, I have not added it. I should think that was about right.

Q. As I understand you, it costs you 35 cents a ton to handle less than carload tonnage in your office at Cincinnati?

A. Yes, sir.

Q. And that was outside of the expense item of interest on money invested, and insurance, and things of that kind?

A. Yes.

Q. What does that 35 cents cover?

A. It covers the labor and seventy-five per cent. of the clerks.

Q. Labor and seventy-five per cent. of the clerks?

A. Labor and the clerks who are incident to the labor downstairs, of course; we have the depot man and the foreman.

Q. So the amount of less than carload tonnage that you handled here during that eleven months specified is 229,247 tons, and the amount of gross tonnage—that means the——

A. That means the whole of all carloads in and out of the station and less than carloads included. It includes everything that is handled in the terminal.

Q. And the gross tonnage handled in this station was
224 2,504,551,—that means all the tonnage that you handled here?

A. Yes, sir.

Q. If you would subtract the less than carload tonnage it leaves the remainder of tonnage handled in this station as 2,275,304 tons; that embraces outgoing and incoming tonnage?

A. Yes, sir.

Q. Now if it costs you 35 cents a ton to handle your less than carload tonnage, according to your statement here the less than carload tonnage which you handled would have cost you $80,236.45. I wish you would figure that out and see if it is not correct?

A. Approximately $80,000.

Q. $80,236.45, isn't it?

A. Yes.

Q. That is what it cost you to handle that 229,247 tons of less than carload lots?

A. Yes, sir.

Q. Now if it cost you for the eleven months $99,000, that left you $19,000 to handle 2,275,304 tons, didn't it?

A. Yes, sir, I think you are right.

Q. Now that is incoming and outgoing tonnage?

A. Carload freight.

Q. Isn't some of that incoming less than carload freight?

A. I don't understand that question.

Q. Doesn't this depot tonnage mean the tonnage outgoing that you have?

225 A. Incoming and outgoing; that is the total in and out of the depot tonnage.

Q. So that for $19,000 you handled 2,275,000 tons of carload traffic?
A. We accounted for it. We didn't touch it nor handle it.
Q. I thought you said you handled it through this station?
A. We accounted for it. The railroad handled it through the station and my part was only that much.
Q. You handled it through your office?
A. Through the office.
Q. That was all the expense of handling it through this office, wasn't it?
A. Yes, sir.
Q. So that for $19,000 then you handled 2,275,000 tons?
A. Or accounted for it.
Q. Didn't you say handled it?
A. I say we account for it. That is what we call handling it.
Q. Didn't you all through your testimony in response to Mr. Maxwell's questions say that you handled so much tonnage here?
A. At the depot.
Q. Both L. C. L. and carload?

A. I don't remember any testimony given to Mr. Maxwell
226 on his questions about carloads.

Q. Then you didn't handle it here then at this office?
A. Now what do you mean by "handling"? I call handling picking up a book like that (illustrating).
Q. You don't pick up a carload of freight?
A. No, but I can less than a carload every time.
Q. But when you handle less than carload freight you don't pick up the car?
A. We speak of it as handling so much.
Q. Certainly; and when you handle a carload of freight through your station you speak of handling it, don't you?
A. Yes, you might carelessly.
Q. Isn't that the usual way of speaking of it?
A. You might say "move it."
Q. There are a hundred different ways of expressing it.
A. We accounted for.
Q. What do you mean by "accounted for"?
A. These clerks did the work, made the entries in the books.
Q. Is that all you did?
A. That is all we did, certainly.
Q. All right, sir; then all the other business of your office here was done for $19,000?
A. Yes, sir.

227 Redirect examination.

By Mr. MAXWELL:

Q. Mr. Glasgow asked you to compare the net revenue of L. C. L. and C. L. freight, and gave you a concrete case of 10,000 tons of each. On what basis did you make your answer to him?
A. My recollection of the question was that he asked me if there were ten thousand pounds of carload——

Mr. COLSTON: Tons. Tons.

A. ——tons of carload freight at a given point, and ten thousand tons of less than carload freight at the same point, to be transported to another point which was the same, on which would the greatest revenue accrue, and I told him that on the less than carload freight the greatest revenue would accrue.

Q. Did you assume that the ten thousand tons of less than carload freight were there ready to be sent to the same point at the same time?

A. He assumed it. He told me they were there.

Q. I don't know what Mr. Glasgow assumed; I want to know whether you assumed that when you made your answer.

A. No—I assumed that they were there at the same time.

Q. Now I want you to assume that you get ten thousand tons of soap, carload, in regular course of business, and ten thousand tons of soap less than carload in the regular course of business as it comes in from day to day; on which would the company get the
228 greater net revenue?—net revenue?

A. If you say "net," why then it would depend on the circumstances. If you want to cite the Louisville case that I have cited, they get a less net revenue on the carload—on the less than carload.

Q. Take the ordinary case, and bear in mind the expenses incident to less than carload shipments to which you have testified.

A. I would have to know the relative basis of the rates, what the rates were. It is such a broad question to ask me, as I understand it, to take any proposition—If you will let me make a suggestion; if you say that the rate on the carload is ten cents and on the less than carload is twelve cents between two given points, I will say that the net will be greater on the carloads.

Q. Well, let us take the case of soap, which is the one involved in this suit, between two given points.

A. Between any two given?

Q. Well, take between Cincinnati and Chicago, for instance.

Mr. GLASGOW: I object to the witness giving his opinion on that; that is a question of knowledge. He can figure it out from the tariff sheets. I have no objection to his making the statement if he knows.

A. Taking the rate Cincinnati to Chicago as a basis, the
229 carload rate being fifteen cents, and the less than carload rate being twenty cents, there will be a net difference of five cents per hundred. Now your question is which would make the most, net, profitable traffic, is that it?

Q. Yes.

A. Considering merely station expenses, the same number of pounds would be—less than carload would be the more profitable.

Q. I want you to consider the average tonnage as well as station expenses.

A. Well, am I asked to answer on a certain number of pounds, or to bring in outside circumstances? Now then, for a certain number of pounds traveling between two places, it is certainly a mathematical question.

Q. I don't want you to answer some chimerical or hypothetical

ase, but I want you to answer with respect to the conduct of the usiness and actual course of business.

A. O well, the carload would be altogether the more profitable.

Mr. COLSTON: Why is that? Tell us.

A. For the reason that there are no—There is no labor incident to ie carload; there is very little clerical service incident to it; there very little risk incident to it; and the chances are that there will never anybody ask us a question about it. It will start in 30 Cincinnati and go to Chicago and arrive there, and the man will get his notice of its arrival, and he will come down with is team and drive it away and I will never hear from it again. On ie less than carload shipment, a fellow breaks a box and a whole t gets spoiled; or there are fifty or a hundred people to notify of ie arrival of the car; some of it goes astray, or somebody loses a box together; some drayman packed up and went away with it and we ave got to pay for the box,—perhaps a half dozen boxes. You come ack to your possible loss, and there is perhaps practically a loss of ie carload.

Q. Would you also include the expense of handling the less than arload?

A. I figured that as about two cents a hundred or more.

Q. Have you made any estimate of the comparative cost of transortation? of less than carload as compared with carload aside from ie expense of depot handling?

A. Why no figures, no, sir.

Recross-examination.

By Mr. GLASGOW:

Q. So I understand you that as far as a carload of soap is conerned from Cincinnati to Chicago there is practically no costs atendant upon that except the very small amount of clerical work, xcept the actual hauling of the car?

A. Yes, sir.

Q. And therefore carload soap can be carried very 31 cheaply?

A. It can be carried cheaply, yes.

Q. You say the difference between less than carload and carload etween Cincinnati and Chicago is five cents a hundred?

A. Five cents a hundred, yes, sir.

Q. And the cost of handling it is about two cents a hundred?

A. Yes, sir, about—including both ends, and more than that, omewhere—I estimate the other end is about—no, it is more than iat, because thirty five cents a ton at Cincinnati, and it certainly not less at Chicago, would make seventy cents a ton.

Q. So then as I understand you, it costs you about or a little bit iore than two cents a hundred more to handle less than carload oap than it does carload soap?

A. For the accounting part, that is, the station work.

Q. What else is there to take into account?

A. Your less than carload you only get into the car about ten housand pounds of freight. It would take practically three times

as many cars to handle less than carload freight between Cincinnati and Chicago as it would carload freight; therefore it takes much more cars—investment in cars, much more investment in tracks.

Q. What would you put that at?

A. Well, I think Poor's Manual will be better authority
232 than I on that.

Q. Well, you are estimating here for us today; we don't want Poor.

A. That is something I couldn't tell.

Q. Couldn't tell. It is really an arbitrary question?

A. I don't think I would be a competent witness in that case.

(The paper produced by the witness and hereinbefore referred to as "marked C. A. B. No. 6" was offered in evidence by counsel for the petitioner as a part of the cross-examination of the said witness, and is hereto attached marked "Exhibit 3" and made part hereof.)

And further deponent saith not.

(Signature waived.)

233 R. R. HARRIS, being first duly sworn, deposes and says as follows:

Direct examination.

By Mr. BAYLISS:

Q. State your name, age, residence and occupation.

A. R. R. Harris. St. Louis. Local freight agent for the Big Four Railroad at East St. Louis.

Q. How long have you occupied that position?

A. Since August 1, 1902.

Q. And what business were you engaged in prior to that time?

A. Well, I began service with the C. C. C. & I. in 1885 as call boy at Galion, Ohio; was then promoted to telegraph operator and station agent at Brainerd, Ohio, which position I held until 1899, when I was transferred to Muncie, Indiana, as freight agent.

Q. How long were you at Muncie, Ind.?

A. A little over three years.

Q. With what railway company were you connected?

A. The Big Four.

Q. What are your duties at East St. Louis in connection with the freight handling by the Big Four Railway Company at that place?

A. My duties are that of freight agent in charge of freight houses at East St. Louis.

234 Q. And who has charge of the employes there handling freight and the clerks that do the clerical work with reference to the handling of freight?

A. I do.

Q. Who employs these men?

A. Well, the heads of the departments under me as a rule employ the men. For instance, the depot master will employ the freight handlers; the chief clerk in the freight office employs the clerks.

Q. But all their work is done under your supervision?
A. Yes, sir.
Q. Where are the records kept with reference to the expense of handling this freight?
A. In my office.
Q. Is there a book kept there?
A. Yes, sir.
Q. I will ask you if you have made an estimate of the expense of handling—of the physical handling of freight at East St. Louis for the years 1903 and 1904?
A. Yes, sir.
Q. What did you make that estimate from?
A. From the records of tonnage submitted to me by clerks in charge of that work, and from the pay rolls from which we get the total amount of expense for each department.
Q. Now are those records and pay rolls the regular records
235 that the business there was conducted upon by the company in the usual course of its business?
A. Yes, sir.
Q. State whether or not you took the figures from those records yourself and dictated them in the statement?
A. The report that I made of the total cost for handling tonnage for the years 1903 and '4 I read from the records myself to the stenographer.
Q. Have you since making up that statement compared or looked at that record to verify the truth of it?
A. Yes. Well, I didn't check it back since I made up the statement to you.
Q. Who made the additions?
A. In the books that I got the records from?
Q. Yes.
A. Some of the months I made them myself and other times they have been—the addiitons were made on the adding machine.
Q. In making up this statement you say for the two years state whether you made those additions or calculations?
A. That is for each of the months, you mean?
Q. Yes, for these years.
A. Well, some of the months I made the calculations, not for all of them, but they were done under my direct supervision by the——
Q. Were you present at the time they were done?
A. Yes, sir.
236 Q. Were you having them done?
A. Yes, sir.
Q. Do you know that they are correct?
A. Yes, sir.
Q. You may now make a statement to be taken down as part of your testimony of the expense per ton solely for the physical handling of freight at East St. Louis in L. C. L. business.

Mr. GLASGOW: I object. Wait a moment. I want to ask a question or two.

Cross-examination on the *voir dire*.

By Mr. GLASGOW:

Q. Do you keep those books from which you took this original memorandum?
A. They are kept on my desk.
Q. Do you keep them?
A. No, I don't keep them. I make some of the entries in them, not all of them.
Q. Do you know that they are correct?
A. I feel satisfied that they are.
Q. Of your own knowledge?
A. Yes, sir, I do.
Q. How do you know if you didn't make them?
A. I checked the records myself.
Q. Checked them all over?
A. The record after the tonnage is put in the book. I checked that.

237 Q. This estimate that you speak of is made up from a number of different books?

A. Yes, the tonnage itself is submitted by clerks; that I don't check.
Q. That is a very necessary part of your estimate, isn't it?
A. Yes, sir, sure.
Q. And you don't know whether that is correct or not from your own knowledge?
A. No, not from my own knowledge I don't.
Q. You didn't keep the books? You are not the bookkeeper?
A. No, but the one book is kept at my desk under my personal supervision.
Q. Do you watch to see the entries go in?
A. I can see them go in; some of them I put in myself.
Q. But from your own knowledge, part of those books you don't know whether they are correct or not?
A. No, not without checking.
Q. And that book was used in making those estimates?
A. Yes, sir.
Q. Where are those books?
A. I have some of them here.
Q. Where are the others?

A. At East St. Louis. The two books we have kept since

238 I have been there are both here. The others are made up in statement form on the platform. They are not kept for file. I don't know as they have them on file.

Q. Where did you get them to make up your statement?
A. They sent me the reports to the office.
Q. Then you haven't any books at all?
A. I have two books here where they are entered in after they come to the office.
Q. Yes, but you don't know whether they are correct or not of your own knowledge?

A. No, I didn't personally take every item.
Q. Certainly. And the books of original entry of which you speak, or the sheets from which you got this information, are not here?
A. No, sir.
Mr. BAYLISS: Are they in existence?
A. No, they are not in existence.
Q. When did you get the information from them?
A. We get it each day on reports we get from the different departments.
Q. And copy them into another book?
A. And copy them into another book.
Q. Where is the book you copy them into?
A. They are here.

239 Mr. GLASGOW: The petitioner objects to the testimony on the ground that the witness does not of his own knowledge know the correctness of this statement, because the original books are not presented, and because it is otherwise irrelevant and incompetent.

Direct examination resumed.

By Mr. BAYLISS:

Q. Do I understand you to say, Mr. Harris, that the books that you took this statement from are the regular records kept on your desk?
A. Yes, sir.
Q. And is the record on which all reports are made to the superintendent and other officers?
A. In reference to the handling of freight. You see I am directly responsible for the expense of the platform, and it is kept for my information to keep check on the platform.
Q. State whether or not those statements in the books that you have with you—whether or not those statements are the basis upon which you handle the business of the platform?
A. Yes, sir.
Q. And the expense of the depot in handling this freight in less than carload lots?

A. Yes, sir, so far as the physical handling is concerned
240 That is all we kept at East St. Louis.

Q. State whether or not this statement that you have that I have asked you about for the two years, was taken from those books that were kept on your desk?
A. The tonnage was, yes, sir, taken from those books.
Q. And the expense?
A. The expense was taken from the pay rolls.
Q. Who has charge of those pay rolls and regulates the pay rolls?
A. The timekeeper and stenographer in my office.
Q. Who has supervision, general charge, of it?
A. I have the general charge.

Q. And how often do you watch to look after the reports and the pay rolls that come in with reference to the expense of the platform?

A. Why I look after the platform expense daily to keep a check on the cost of handling freight. For instance, it may be for one day very large, and I will immediately call the depot master and ask him what the trouble is, he has either got too many men or there is something else the matter.

Q. Now in making your estimate of the expense per ton in the handling of this business on the platform, you may state if that is made up from your actual pay rolls on which payments are made for your labor?

A. We have certain items that are paid on our ledger roll for work in the way of, say scrap, and work of that nature that is
241 always deducted from the total of the pay roll because we figure the cost per ton.

Q. What do you keep this pay roll for?

A. Well, the pay roll is made to pay the laborers.

Q. Yes, and what other use do you make of this pay roll?

A. To get from it the station expense.

Q. Do you get it periodically, or how frequently?

A. We get the time slips at my desk every morning, and the labor roll is made once a week.

Q. How often then do you make estimates?

A. Each day.

Q. Of the cost per ton?

A. We make estimates each day. The time slips are gone through, we figure up the number of laborers we had hired the day before, and the number of pickers.

Q. Number of what?

A. Pickers. We call them "pickers." And storers, they get the same. The pickers pick freights off the platform for loading in the room, and the truckers handle them. The pickers get fifteen cents an hour and the truckers get sixteen cents an hour.

Q. How often do you make the calculation of the expense per ton?

A. It is done every day for the day before that.

Q. How is that done? Explain.

A. As I said, we go through the time slips, and pick out
242 the number of laborers, and take the number of pickers and storers and multiply that by fifteen cents per hour, and take the number of truckers and multiply that by sixteen cents; that gives the total amount.

Q. That is the labor expense?

A. And take the tonnage as it is reported from the platform for the day before, which comes to us in pounds. It is entered in this book as you can see (indicating book), and that is reduced to tons. You divide the expense of handling the day before by the number of tons, that gives the cost per ton.

By Mr. COLSTON:

Q. That is done every day?

A. Yes.

Q. Under your supervision?
A. Yes.
Q. By your direction?
A. Yes.
Q. Where have you the results of that daily expense for tonnage? Where do you carry that?
A. Why it is carried in this book I have here.

By Mr. BAYLISS:

Q. That is entered in the book you have here?
A. Yes, sir.
Q. And from which you say that you have made up this statement of the expense for each month for the two years?
243 A. Yes, sir.

By Mr. COLSTON:

Q. Do you preserve these data from which the expense is calculated after it is entered in the book, or are they destroyed?
A. They are destroyed.
Q. Not now in existence?
A. Not now in existence.
Q. So that the first evidence of this expense per ton exists in this book?
A. Yes, sir.
Q. And nowhere else. And from that you copied this statement, is that right?
A. Yes, sir.
Q. And from that this statement that you present here is made up, is that right?
A. Yes, sir.
Q. So that to verify this statement you made up here it is only necessary to compare that with the book you have here?

Mr. GLASGOW: I object to that as leading.

A. That is all.

By Mr. GLASGOW:

Q. How would you verify this statement?
A. I don't believe I could explain in detail how we would
244 have to go at it. That would be a hard matter to do now.
Q. How would you compare this statement to see whether it was correct or not?
A. To the book.
Q. Those books you have spoken of?
A. Yes, sir.
Q. Have you got those books with you? Get the book out here.

Mr. GLASGOW: My objection does not go to that fact at all. I don't care about making you do that. My objection goes to the fact that the book from which he made it he don't know whether — is correct or not.
Mr. BAYLISS: We would like to verify this.

Mr. GLASGOW: If he says that is a mere copy of the book, I have no objection to that. That is not my objection at all.

Q. Do you or not say this is a correct copy of the book?

A. This is a correct copy from the monthly report I make to the superintendent. In the book is the weight carried out each day, and we took the total amount of payroll to get these figures here. You could get the weight as reported here off of that book, and the other balance you would have to get from this book here.

245 Mr. GLASGOW: Now I want to renew my objection.

Mr. COLSTON: Wait a minute. Where are those books?

Q. Turn to January, 1903. State what book that is?

A. This is the tonnage book.

Q. State whether or not the accounts in that book are made up in the manner you have just described.

A. At that time we didn't carry the daily expense out.

Q. I know, but the entries——

A. The entries are made up the same as I described.

Mr. GLASGOW: All you have to do is to ask him if that statement is made up correctly from those books. I have no objection to that.

Q. State whether or not this statement that you have made up for the revenue of the two years 1903 and 1904 is correct as shown by these books?

A. Yes, sir.

Mr. GLASGOW: Now then, my objection is this: you don't know whether the information in those books—of your own knowledge—is true or not, do you?

A. There might be a discrepancy in the amount of tonnage.

Mr. GLASGOW: You didn't make up those books?

A. No.

Mr. GLASGOW: You don' know of your own knowledge whether they are correct or not?

A. No, I don't make up the books.

Mr. GLASGOW: And you don't know of your own knowl-
246 edge whether they are correct. Now my objection is that the books upon which the witness has made the statement were not made up by him, and he says that he does not know of his own knowledge that they are correct, therefore any statement made from those books is objected to.

By Mr. COLSTON:

Q. You of course of your own personal knowledge cannot say whether the time kept out on the platform is accurately kept or not; you have to rely on the clerk for that?

A. Yes, sir.

Q. And you cannot say whether the amount of tonnage that is computed by some clerk or clerks out on the platform is correct or not, you can't be present to see that?

A. No, sir.

Q. But those data made by those clerks are not in existence after they are transferred to this book?

A. No, sir.
Q. And the railroad company acts in all its business and officially in all the steps that it takes in reference to this matter, upon the reports made by those clerks?
A. Yes.
Q. They are paid and hired for that purpose?
A. Yes, sir.
Q. You don't know where those clerks are?
A. No, I don't, not all of them.
247 Q. Some of them may be dead, and some scattered,—not accessible?
A. They keep changing all the time.
Q. You don't know where they are?
A. No, sir.
Q. Would it be possible to get those clerks?
A. No, sir.
Mr. GLASGOW: Where is the man that kept that book?
A. This man happens to be a lady. She is in St. Louis.
Mr. GLASGOW: That is all the better. She's there still?
A. Yes, sir. Yes, sir.
Mr. GLASGOW: She could be brought here, couldn't she?
A. Yes, sir.

By Mr. BAYLISS:

Q. Mr. Harris, you may now state what the cost per ton was in the month of January, 1903?
A. The physical handling was 25.71 cents per hundred—'03 or '05? '01 '03, 19.6 cents.
Mr. COLSTON: That is for physical?
A. Physical.
Mr. COLSTON: What is included in physical?
A. It is the expense of the truckers, pickers, storers and car men.
Q. Does that include any clerical work?
248 A. No. No clerical work at all.
Q. On the platform or in the office?
A. No, sir.
Q. Now for February?
A. 23.83 cents per ton.
Q. March, 1903?
A. 21.71 cents per ton.
Q. For April?
A. 22.34 cents per ton.
Q. May?
A. 28.21 cents per ton.
Q. June?
A. 32.69 cents per ton.
Q. July?
A. 27.73 cents per ton.
Q. August?
A. 28.72 cents per ton.
Q. Now you may go right along.

A.—

September	29.93
October	28.51
November	24.06
December	24.42

Q. Beginning with January, 1904?

249 A.—

January	21.09
February	24.26
March	21.34
April	21.45
May	21.95
June	21.13
July	21.63
August	21.81
September	21.74
October	19.95
November	20.55
December	22.73
January	25.71

Q. That is 1905?

A. Yes, sir. February, 23.91.

Q. That was last month?

A. Yes.

Q. Now I observe that there is a variance here. You may state what conditions existed to cause the variance, apparent variance, in the expense of handling this freight?

A. The conditions at East St. Louis vary greatly owing to the fact that we have to depend on wagon transfer to a great extent to have our freight removed from the freight houses, and in case of a congestion it consequently makes slow handling of freight; it at the same times makes it more expensive to handle.

Mr. COLSTON: Can't get at the freight?

A. No. The month of February, or the latter part of January and the month of February we had exceedingly bad weather, and you will note that the rate was higher both those months.

Q. Mr. Harris, I understood you to say that this statement
250 that you have made does not include anything for clerical work?

A. No.

Q. State where that clerical work is done, or if done in more than one place.

A. Yes, we have a platform clerical force.

Q. What does the clerical force on the platform do?

A. It consists of the depot master, platform foreman for each of the houses, receiving and delivery clerks, checkers, tally checkers, tonnage clerks, watchman and cooper.

Q. What do you keep that cooper for?

A. To repair boxes and such things; we call him a cooper. An O. S. D. clerk—we have a platform O. S. D. clerk.

Q. Explain what "O. S. D." means.

A. Over, short, and damage report clerk.
Q. To whom do these clerks report?
A. They report to the depot master with the exception of the O. S. D. clerk, who reports to the claim department.
Q. Do they make their reports at stated periods, or do they report right along as the business proceeds?
A. Right along as the business proceeds.
Q. And where else do you have any clerical work done in connection with this work?
A. We have clerical work done in the general office. A certain proportion of that expense I believe can be charged to the handling of less than carload business.

251 Q. Well, now taking all the expense of the clerical work at your station, what per cent. would you say was chargeable to the work of handling L. C. L. lots of freight?
A. We are a heavy inbound merchandise line at East St. Louis, and in my own judgment, while I have no figures to show for it, I believe that eighty per cent. of it can be attributed to the handling of L. C. L. business.

By Mr. COLSTON:

Q. What is that judgment based on?
A. Just my general information.
Q. And observation?
A. Yes, and observation.
Q. And experience?
A. Yes, sir.

By Mr. BAYLISS:

Q. Now if you have made a calculation or estimate heretofore or today of any one month of the clerical expense for handling tons of L. C. L. freight, you may state what month it was.
A. Why since I have been here I have been figuring on the month of January this year; I had some figures on a piece of paper, I can't find them now. The physical handling you have on the statement there. The platform clerical work costs about fourteen cents a ton in addition to that.

Mr. GLASGOW: How much is that?

252 A. About 14 cents a ton.

Mr. GLASGOW: Clerical work?

A. Platform clerical work. Figuring 80 per cent. of the office clerical work would bring the total up to a fraction over 72 cents a ton.

Mr. GLASGOW: 72 cents a ton?

A. Yes, I had the figures here on a piece of paper but I have lost it. It is an expensive piece of proposition at East St. Louis.
Q. You had the figures just before we adjourned?
A. Yes, I had them but I can't find them now.
Q. You can re-produce those figures?
A. I can draw them off again if necessary.
Q. I will not ask you to stop to do it now, but if you will do so I will be glad to have it.

Mr. GLASGOW: 72 cents per ton?

A. Yes, of course that is figuring on a basis of 80 per cent. of the office clerical work that is used in handling L. C. L. business.

Q. Well, in your judgment and from your experience and observation, and your knowledge of the expense connected with this business, is that a fair per cent.?

A. I believe it is, in my own judgment.

Q. Now all this expense that I have been asking you about,
253 Mr. Harris, at your station, East St. Louis, state whether or not that is entirely or wholly attributable to the handling of L. C. L. freight?

A. This expense that I have given you, yes, sir.

Cross-examination.

By Mr. GLASGOW:

Q. Mr. Harris, your road runs from East St. Louis to what point? Does it run to East St. Louis?

A. Yes, sir.

Q. What is the nearest large town east of that?

A. Indianapolis—Terre Haute.

Q. Well, say Indianapolis. What is the rate on soal less than carload lots from East St. Louis to Indianapolis?

A. I am very sorry but I will have to confess ignorance. I am not versed on those rates at all.

Q. Haven't you got it?

A. I haven't got a thing here. I didn't come prepared for that.

Q. You only take care of making the expenses?

A. That is one of the main features, keeping the expenses down.

Q. Well, in keeping them down. It costs you, you say, 72 cents a ton to handle L. C. L. business at East St. Louis?

A. That is in my judgment, yes, sir.

Q. Well, then, it costs you more than that when you go
254 to deliver it, don't it?

A. No, that constitutes the delivery.

Q. Delivery to the consignee?

A. I am speaking of what constitutes the delivery of the inbound freight.

Q. I am talking of—suppose you shipped a ton of L. C. L. freight from East St. Louis to Indianapolis, when you get to Indianapolis you have to pay more than 72 cents then to deliver it, don't you?

A. Yes.

Q. So that would be $1.44 a ton?

A. I couldn't tell you for I don't know what it costs at Indianapolis.

Q. It costs more to deliver it than it does where it originates, doesn't it?

A. I couldn't tell you as to that.

Q. You don't know?

A. No.

. Well, there can't anybody else handle it any cheaper than you at East St. Louis, can they?
. Well, I believe they can, but then I don't know what it costs n at Indianapolis.
. Why do you think it costs you more than anybody else?
. At some stations they don't load and unload the wagons as we do. We unload with our own station force. The drivers don't get on the platform.
Q. How do they do at other places?
. I understand some places they do the same thing, I don't w where that is at. At Indianapolis I don't know how they dle it.
. Why is it it costs you more than it does other places?
. As I say, some places they don't handle on and off the wagons e do.
. Explain why it costs more at your place than others.
. And another thing, the physical conditions at East St. Louis different from other places. We have to depend altogether on vage and transfer companies to handle our freight, and the dling of the freight depends wholly on the number of wagons are accessible.
. And what else?
. That is the main thing.
. That is the reason it costs you more at East St. Louis than it at other places?
Ir. MAXWELL: The witness has not stated it cost more at East Louis than at other places.
. Didn't you just tell me just now——
. No, I don't think——
Ir. MAXWELL: You put that in your question.
. Didn't you say a few minutes ago that you understood it cost you more at East St. Louis thas it costs some other places?
A. I have understood by common repute but I don't know it to be a fact. I don't know it to be a fact. I have never n any statistics or anything of that kind to prove to me that it more at East St. Louis.
. But didn't you undertake to explain why it did a moment ?
. Yes, if anything would cause it that would cause it.
. What is that?
. The wagon facilities we have at East St. Louis.
. Are more expensive?
. No, the source of wagon supply is not as readily gotten at as some other places.
. And the prices are higher?
. The prices of handling? I don't know about that.
. If there are not enough wagons for the business naturally the ces would be higher?
. I don't know anything about other roads in handling freight.
. Do you mean that it cost you 72 cents in the month of Janu- this year, 72 cents per ton, for every carload of freight you ndled?

A. That is my judgment. I have no figures; only an estimate.

Q. If it cost 72 cents to handle a ton of soap at your station, and cost 72 cents at Indianapolis to deliver it, will you please tell me where the money came from to pay for the transportation
257 of it?

A. No, I couldn't tell you that.

Q. Well, it doesn't look——

A. All I have charge of is the handling of the freight at East St. Louis. I couldn't tell you about the other.

Q. It is not very profitable handling that business out there, is it?

A. That is something I will have to leave for the traffic department to answer. I am simply put there to handle it.

Q. You don't know anything about whether you make money or not in handling it?

A. No, sir.

Q. How much during this period that you speak of, during the month of January, 1905, how much less than carload freight did you handle in tonnage?

A. I will have to get it off—here, it is in here.

Mr. COLSTON: State what book you are looking at now.

A. The tonnage book.

Mr. COLSTON: One of those same books you spoke of before?

A. Yes, sir.

Q. That is the one you said you didn't know whether it was correct or not?

A. January, 1905, 10,266 tons.

258 Q. 10,266 tons?

A. Yes.

Q. What were your expenses of your office for January, 1905?

A. That I will have to get off of there.

Q. All right, sir. (Handing witness paper.)

A. The clerical roll was $5,553.95.

Q. For January, 1905?

A. Yes, that is the clerical roll.

Q. Well, what else?

A. You asked for the office expenses?

Q. Yes. How much did it cost you to run your office.

A. Well, that is what it cost to run the office.

Q. I am talking about the handling of that freight; what did it cost you at that station?

Mr. COLSTON: I beg your pardon, you asked the total expenses.

Mr. GLASGOW: Well, I will withdraw that question. That is what I meant.

Q. What did it cost you to run your office with all the expenses incident to it during the month of January, with all the business that you did?

A. $5,553.95.

Q. Does that include the labor?

A. The labor don't have anything to do with the office.

Q. Don't have anything to do with handling freight?

259 A. It has to do with handling freight, but then——

Q. Now what was that?

A. $2,641.10.
Q. So it cost you $8,195.05?
A. I believe that is right. I don't——
Q. Now the 10,266 L. C. L. tonnage handled at 72 cents—work it out,—would make $7,391, wouldn't it?
A. Yes, sir, I suppose it would.
Q. Well, work it out if you have any doubt about it.
A. I have the total amount. What was it you wanted? 8195.05.
Q. Take off—10,266 tons at 72 cents makes 7391.52?
A. 7391.52.
Q. Then take that from 8195.05?
A. Yes.
Q. What other business did you do at East St. Louis during the month of January except handle that 10,266 tons? Didn't do anything?
A. We handled some carload lots.
Q. How much?
A. I can't tell you. Not very much, though.
Q. So that all the balance of the work you did there cost you 803.53, didn't it?
A. Yes, sir.

Q. Then your carload business don't cost you much of anything, does it, at East St. Louis?

A. Not as compared with the less than carload.

Q. At East St. Louis it doesn't cost you much of anything, does it?
A. It costs a sufficient amount to handle it, that is all.
Q. You don't know the tonnage?
A. No, I don't. I haven't got those figures with me.

Redirect examination.

By Mr. COLSTON:

Q. How is that carload business done at East St. Louis there? How do you get it on the cars?
A. It is loaded by the shipper and unloaded by the consignee.
Q. Loaded right on the car from the wagon?
A. Yes, with the exception of shipments coming from the St. Louis Transfer Company. We treat them the same as a connecting line, and unload the shipment on to their wagons from the car.
Q. Does it go through the freight house?
A. No, unload it right on the wagons.
Q. Pitch it right out of or into the car?
A. Yes, sir, from the car to the wagon.

Q. If you did nothing but carload business you wouldn't need any freight house, would you?

A. No, sir.

Q. All the freight house expenses then are incident to this less than carload business?
A. Yes, sir.

Recross-examination.

By Mr. GLASGOW:

Q. It doesn't cost you much on that road to handle carload traffic, does it?

A. Not as compared—That is, the handling of it don't cost us much as compared with the less than carloads.

Q. I know, but it doesn't cost you much of anything does it?

A. It costs something. You mean for the handling of it?

Q. Yes.

A. It costs us something for the billing and keeping the record, abstracts of the movements of the car.

Q. You say that one of those companies out there you deliver the freight to in their wagons?

A. Yes.

Q. In carload lots?

A. Yes, sir.

Q. Why don't you deliver it to the others?

A. That is not the arrangement made between them and
262 our company. I don't know why it was made.

Q. You do deliver it to them and don't to anybody else?

A. Only in very rare cases.

Q. What are those rare cases?

A. Well, if a shipment is heavy and needs some help, that cannot be handled by the driver and possibly one man, we will send men to help it on the wagon as a matter of accommodation.

Q. What is the name of that company you handle the freight for?

A. St. Louis Transfer Company.

Q. Is it a large shipper? Does it have a large tonnage?

A. Yes, sir, they run, I am told, about 250 wagons.

Q. And you unload all that freight, do you?

A. What freight come in over our road for them in cars we unload it from the car to the wagon; that is, carload freight.

Q. Freight enough to keep 250 wagons going?

A. No, there are about thirty railroads at East St. Louis, and they are divided up amongst those railroads.

Q. Well, I asked you how much traffic you handled for them, and you can't tell me, I believe?

A. Well, probably eight or ten wagon loads a day; it won't average over that.

Q. Is there anything at East St. Louis that makes the
263 handling of less than carload freight very expensive as compared with other points?

A. I can't tell you about that for I don't know——

Q. You worked at Muncie and worked at a whole lot of other places.

A. I can tell you so far as Muncie is concerned that the expense there was a great deal less for the reason that we didn't load the freight on to their wagons or off of the wagons into the house. The drivers did that themselves at Muncie.

Q. Do you load it off and on at East St. Louis?

A. Yes, sir.

Q. Well, now how about other points?
A. I can't tell you about that.
Q. So that then they load it on and off at East St. Louis and that is one of the reasons that makes it more expensive?
A. Yes, sir.
Q. And that doesn't apply so far as you know to other points you have been to?
A. No, I have understood it would apply to other points but I don't know it to be a fact.

And further deponent saith not.
(Signature waived.)

264 A. L. ROBINETT, being first duly cautioned and sworn, deposes and says as follows:

Direct examination.

By Mr. MAXWELL:

Q. What is your name, age, residence, and occupation?
A. My name is A. L. Robinett; age, forty-four; residence, 3158 Harvey avenue; occupation, local freight agent of the Pennsylvania lines in Cincinnati.
Q. How long have you been freight agent of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company at Cincinnati?
A. About two years and five months.
Q. What connection had you had with the railroad business prior to that time?
A. I have been with our company about twenty-nine years.
Q. In what capacities?
A. I started in as office boy; yard clerk; clerk in a local office; freight cashier; and agent.
Q. What is the average L. C. L. tonnage of your business at Cincinnati?
A. About six tons per car.

Q. What is the cost at your station of handling L. C. L.
265 freight?

A. About 31.4 cents.
Q. Per ton?
A. Per ton.
Q. In that cost do you include anything for insurance and investment in depot, and other general expenses of that sort?
A. No, sir.
Q. What do you include?
A. Just the labor and about 75 per cent. of the clerical force.
Q. Is 75 per cent. of the clerical force of your depot used in the L. C. L. business?
A. That is my judgment, yes, sir.
Q. Is 75 per cent. of the clerical expense of your depot a high or a low estimate? of the cost of the clerical force for handling L. C. L. freight?
A. In my judgment it is low.

Q. Did you make a computation of the per centage of the different classes of freight in your L. C. L. business?
A. I did, for three days.
Q. What three days?
A. June the 9th, 10th, and 13th, 1904.
Q. How did you happen to select those particular days?
A. Well, it was agreed to take an ordinary month, and each road to furnish three days' business.
266 Q. The two days that you omit are Saturday and Sunday?
A. Yes, sir, the two days are Saturday and Sunday.
Q. And Saturday would not be a fair average?
A. Would not be a fair average.
Q. And Sunday you dedicate to the Lord?
A. Yes, sir.
Q. Is the month of June a fair average month?
A. A fair average month, I think.
Q. And I infer from your statement that your road and three other defendants picked out three days in that month?
A. Yes, sir.
Q. And was that for the purpose of ascertaining as fairly as you could the percentage of the different classes of freight in L. C. L. shipments?
A. Yes, sir.
Q. Do you believe the result is a fair average of the different classes of L. C. L. freight?
A. I do.
Q. Will you please produce the percentages ascertained in that way on your road for those three days?

(Witness produces sheet which is marked "Exhibit 4," and is hereto attached and made part hereof.)

Mr. GLASGOW: The introduction of this paper is objected to on the ground that an arbitrary selection of three days is not proper,
267 and because it is otherwise irrelevant and improper; and not waiving this objection, the petitioner proceeds to cross-examine.

Cross-examination.

By Mr. GLASGOW:

Q. What do you say it costs you to handle a ton of L. C. L. freight at your station?
A. 31.4 cents.
Q. What goes to make up that cost?
A. That is the labor force in the freight depot, the labor and clerical force in the freight depot.
Q. Taking 31.4 cents, what period did you take to work out and get that percentage?
A. The year 1902.
Q. The whole year?
A. The whole year.
Q. What was the total for that year, L. C. L. freight?

A. 266,204 tons.
Q. What is your road?
A. The P. C. C. & St. L. Railway, Pennsylvania line.
Q. Have you ever been agent at any other point than Cincinnati?
A. No, sir.
Q. You don't know how that cost compares with other stations?
A. Not officially, no, sir.
268 Q. Is there anything at your station here that would make it particularly expensive to handle L. C. L. freight here?
A. Not any more than what — on the basis that I have given the figures there.
Q. Well, I understand; but is there any want of equipment or anything else that renders it expensive to handle the freight here at this station, which could be cut down?
Mr. MAXWELL: Anything exceptional?
Q. I mean anything that you could reduce.
A. Generally speaking, there is a large terminal expense for handling all classes of freight.
Q. What is that?
A. That is the peculiar conditions here at Cincinnati.
Q. Peculiar conditions here?
A. Yes, the yards, and other terminal expenses here for handling all classes of freight. The roads only have about three inlets here in Cincinnati; they come down the Mill Creek Valley; up the river; and down the river.
Q. Which makes it particularly and peculiarly expensive in Cincinnati?
A. In Cincinnati for all classes of freight.
Q. Yes that is what I thought.
A. They are strung out so long and nothing to widen it.
Q. So under different circumstances where your yards were differently located, the expenses would not be so great?
269 A. Would not be so great.
Q. So the expense 31.4 cents per ton is your experience at this office?
A. Yes, sir.
Q. And due to the fact that the peculiarities of handling freight at Cincinnati render it more expensive; that is correct, isn't it?

Mr. MAXWELL: I wish to object on the ground that the witness has not stated what the expenses are at any other places, and has not undertaken to compare the expenses of handling at Cincinnati with the expense of handling at any other place.

Mr. GLASGOW: Counsel for petitioner objects to this interruption. The witness can answer the question, and I will repeat it.

Q. You have stated, have you not, Mr. Robinett, that that 31.4 cents per ton, the expense of handling L. C. L. traffic at Cincinnati in your office, or at your office, or through your office,—that the Cincinnati situation was such that it was peculiarly expensive to handle the traffic here of your road, isn't that correct?
A. It is, but it has no bearing on this 31.4 cents per ton.

Q. It hasn't?

A. Not particularly.

270 Q. But didn't you say that that was——

A. I say generally speaking,—generally speaking, it is expensive at Cincinnati for the transaction of all railroad business.

Q. Well, didn't you say to me just now that 31.4 cents per ton could be reduced very considerably if the yard conditions were different?

A. No. No, I didn't say it in that way.

Q. Now what did you say?

A. I said the general conditions at Cincinnati were such that it made all traffic rather expensive to handle. I didn't particularly state that it made less than carload business more expensive to handle because this is the less than carload handling in the house and the clerical expense attached to it. Now what I had reference to was the general expenses of the transportation department, which would not enter into this here expense. They have other heavy expenses which would not enter into this.

Q. Didn't you tell me that the 31.4 cents expense could be reduced but for the peculiar situation at Cincinnati?

A. No, I don't believe that I did.

Q. Well, what is it then that keeps that 31.4 cents up to that point?

A. I don't believe that the freight can be handled for much less than that.

271 Q. It cannot?

A. No, sir.

Q. Under any better conditions?

A. To make it plain to you: when a car is placed in a house, there is no expense—the expense does not attach to the station, you understand, for placing cars or taking them out of the house; and when the cars are placed we can handle the freight, load and unload it.

Q. What are your total expenses of your office in handling freight of all character and doing all character of work done by your office during 1894?

A. I haven't got the figures with me.

Q. Haven't you got an idea what it was approximately?

A. No, I can't tell you.

Q. Approximate it. $100,000?

A. For the year? Yes, it was more than that.

Q. More than one hundred thousand?

A. Yes, I think it would run about $120,000 or $125,000.

Q. $120,000 or $125,000?

A. Yes, close to that.

Q. What did that include?

A. That included the general expense of the office, and the labor performed at the depot, all classes of labor.

Q. Do you think it costs you 31.4 cents to handle a ton of soap?

A. Taking the clerical force and all together, I think it does.

272 Q. Isn't it less expensive to handle soap than some other things?

A. Yes, it is less expensive handling any boxed goods—any boxed goods than it would be to handle some other things. Still—it can be handled quickly—handled quicker, you might say, but when you come to compute the tonnage that you handle of all classes, and the average——

Q. Now let's get away from the average.

Mr. COLSTON: Let him finish the question.

A. And the average is about—is on that basis.

Mr. COLSTON: What basis?

Mr. GLASGOW: Hold on; I will let him go, but I can't——

Q. The average is 31.4?

A. Yes, sir.

Q. Let us get away from the average. Don't it cost you as a matter of fact much less than 31.4 to handle a ton of soap?

A. I don't believe it does.

Q. Didn't you just this minute say that it cost you less to handle any boxes?

A. What I had reference to was this: that a man can handle it easier, but we have to pay our men on a certain basis; we pay our men on the tonnage basis.

Q. Don't you pay them by the hour?

A. Some we pay by the hour; some of the men handling
273 freight, loading and unloading, is paid by the ton,—per ton.

Q. Those that you pay by the hour can handle a heap more of it that they can some other?

A. No, They can't.

Q. I thought you just said they could handle it much more speedily when it was boxed goods.

A. That is all right, but they don't do it.

Q. They don't?

A. No.

Q. What was the object in saying they could do it?

A. A man working on the hour basis usually takes his own time to push a truck, while he working on the tonnage basis is pushing that truck pretty fast in order to make the money.

Q. So that it costs you as much to handle boxed freight per ton as it does any other?

A. Yes, it will cost as much.

Q. Didn't I understand you to say that it cost less?

A. Well, I believe you did, but I didn't intend it for the—on a case—per ton plan that we pay our men. I meant it was easier to handle the boxed goods than it would be to handle a big machine or something of that kind.

Q. Isn't boxed goods particularly attractive as traffice to the railway company by reason of the ease with which it is packed in a car and handled?

A. Well, I should judge it would be.

274 Q. And by reason of the little space that it takes up compared with some other bulk?

A. Well, that particular class of freight only; you might have lots of boxed goods——

Q. Well, I am talking about soap.
A. Soap, yes. That there would be all right. It would be a good class of freight to handle.

Redirect examination.

By Mr. MAXWELL:

Q. In this statement of the cost of handling L. C. L. freight at 31.4 cents per ton have you included anything for the investment in your depots, and cost of insurance, and general expenses of the operation of your railroad?
A. No, sir.
Q. Have you included anything else but the actual cost of handling that L. C. L. freight at your Cincinnati depot?
A. That is all.
Q. Is there anything that makes the actual handling of L. C. L. freight at your Cincinnati depot more than the average cost of handling such stuff?
A. Nothing that I know of.
Q. The fact that the railroads at Cincinnati have to come in through certain valleys, has that anything to do with what it costs to handle L. C. L. freight in your depot?
A. No, not in the depot.
275 Q. You don't have to pay your laborers any more or less because Cincinnati is in the valley, do you?

(Objected to by counsel for the petitioner as leading.)

A. No, sir.
Q. You don't have to pay your clerks any more or less because Cincinnati is in the valley?

Mr. GLASGOW: I object to all this as leading.

A. No, sir.

Recross-examination.

By Mr. GLASGOW:

Q. Is there any difference——

Mr. MAXWELL: I object to any further examination. This witness has been examined, cross-examined and re-examined and I object to further cross-examination. It makes the examination of the witness interminable.

Q. How does it compare in the convenience of handling and expense of handling—soap in less than carload lots and brick in less than carload lots?
A. We pay our men on the tonnage basis——
Q. I ask what is the convenience and expense, how does it compare?
A. Compare about the same.
Q. How about horseshoe nails as to expense and convenience of

handling compared with soap in less than carload lots, both
276 of them?

A. On the same basis. We pay our men on the tonnage basis.

Q. About the same expense and about the same convenience of handling?

A. I think so, yes, sir.

Q. How about sheet iron? Cotton ties? About equal expense and equal convenience, isn't it?

A. Les than carload, you mean?

Q. Yes, less than carload.

A. It is with us. We pay the men on a tonnage basis.

Q. How about forgings and nails and spikes, iron roofing, sash weights when they are packed,—that compares about the same with soap in boxes in less than carload lots?

A. All based on our paying on a tonnage basis.

Q. It costs you about the same, and about the same convenience in handling, isn't it?

A. About the same, yes, sir.

Q. How about jute, and lead, and nitrate of lead, and sulphate of lead, paints in oil and dry, powder, potash, caustic in iron drums——

Mr. MAXWELL: I object to these questions on the ground they are not proper cross examination. They do not relate to the evidence which the witness has given with respect to the actual cost of handling L. C. L. freight at the Cincinnati depot of this company.

277 Q. —Saltpetre? Those are about the same convenience and about the same expense of handling with soap in less than carload lots, are they not?

A. As far as our cost is concerned it is all placed on a tonnage basis,—all the men handling the freight.

Q. And they would cost about the same, and about the same convenience of handling?

A. One would cost the same as the other. We base our—we pay on the tonnage basis—our men on the tonnage basis, so much per ton for the freight that they handle.

Q. So that it would cost you about the same to handle that in less than carload lots, and it could be handled with about the same convenience as soap in boxes?

A. Not lead wouldn't be.

Q. Now Mr. Robinett——

Mr. MAXWELL: Let him give his answer.

A. Lead put in kits all has to be carried usually, a large portion of it. It can't be handled as easily as dry goods and soap because that can be placed on a truck.

Q. Didn't you just now tell me that they could be handled, the ones I spoke of,——

A. On the cost——

Q. —with about the same convenience and the same cost?

A. Not the convenience; I said the cost.

278 Q. Haven't I been asking you from the beginning about the convenience of handling as well as the cost?

Mr. MAXWELL: I object to the question. It appears by the record, and also appears by the prior answers of this witness that the cost to his company of the handling is so much per ton.

Q. Haven't you stated as to the articles I mentioend to you that the cost of handling them as well as the convenience of handling them was about the same as soap in boxes in less than carload lits?

A. I don't believe I said the convenience.

Q. Haven't you heard me ask that question?

A. I beleive you asked along the first part of the first question you asked.

Q. Take up any of those that I had up with you, isn't it just as convenient to handle soap in boxes as it is brick, enameled brick, glazed brick?

A. No, sir, it is not as convenient to handle brick as it is soap?

Q. Certainly, it is more inconvenient to handle brick than it is soap?

A. Yes, sir, it is more inconvenient.

Q. I don't recall the other things I asked you about,—castings, bridge iron,—it is more convenient to handle soap?

A. It is more convenient to handle soap than that, but we pay our men as I stated on a tonnage basis.

Q. And it costs the same, doesn't it ?

279 A. It costs us the same, yes, sir.

Q. So that if brick was in the fourth class in your official classification you could handle in less than carload lots soap at just what it cost you to handle brick, couldn't you?

Mr. MAXWELL: Does the question relate to the cost of depot handling?

A. You said less than carload brick?

Q. Less than carload lots, I say.

A. It would cost us just the same per ton.

Q. It would cost you just the same per ton, and it would be more convenient to handle the soap than it would the brick, wouldn't it?

A. It would.

Q. Let's take one or two other things. Let's take angle iron or bridge iron. If that was in the fourth class it would cost you just the same amount to handle a ton of soap in less than carload lots as it would a ton of angle iron or bridge iron?

A. A ton of angle iron or bridge iron.

Q. In less than carload lots.

A. But a ton of angle iron or bridge iron would be very small probably compared to the amount of soap.

Q. Yes, but I am talking about the cost of handling it at your office. It would cost you the same, wouldn't it?

Mr. MAXWELL: The witness has repeatedly stated that the
280 cost to his company of depot handling was so much per ton without reference to the class of the freight, and I object to further inquiry on that subject.

Q. It would cost you just as much to handle the angle iron or the

bridge iron a ton in less than carload lots as it would soap in less than carload lots at your office, wouldn't it?

A. It would.

Q. And the convenience of handling the soap would be much more than that of handling the bridge iron or angle iron, wouldn't it? They don't put that in boxes, do they?

A. No, but a very small amount of angle iron or bridge iron would be handled by the men, and a great deal quicker than they could handle soap of the same weight.

Q. How is that?

A. Because the iron is a great deal heavier and would be smaller in proportion to the soap.

Q. I know that, but he isn't going to carry a ton any quicker, is he? He would carry less of it, wouldn't he?

A. He could handle a ton of iron a good deal quicker than he can a ton of soap.

Q. The cost would be the same?

A. The cost would be the same.

Q. But how would the convenience be? I don't care what it is, I want to know.

A. Well, I believe that the man could, as far as the con-
281 venience is concerned—that he could handle the iron more conveniently than he could the soap, he could handle it quicker.

Q. How about cotton ties?

A. Well, that is according to how they are put up.

Redirect examination.

By Mr. MAXWELL:

Q. Do you have cotton ties shipped in less than carloads?

A. Not to my knowledge.

Q. Do you have bridge iron shipped L. C. L.?

A. We have channel iron—Not as I know of, bridge iron.

Q. Do you have any of the articles that Mr. Glasgow has been asking you about shipped L. C. L.? Take bricks for instance, are they shipped L. C. L.?

A. A very small quantity compared to other class of goods.

Mr. GLASGOW: All of these tariff sheets provide for those things being shipped L. C. L., don't they, and give a rate on them?

A. I believe so.

Mr. COLSTON: As a matter of fact they are not shipped, are they, that way?

A. A very small proportion of them. Brick is usually shipped in carload lots.

And further deponent saith not.

(Signature waived.)

282 W. H. SPARKS, being first duly cautioned and sworn, deposes and says as follows:

Direct examination.

By Mr. MAXWELL:

Q. Give *toyr* name, age, residence, and occupation.

A. Age fifty-four; residence 919 Neal avenue, Columbus, Ohio. Local freight agent of the Pennsylvania lines at Columbus.

Q. How long have you been freight agent of the Pennsylvania lines at Columbus?

A. Two years and eight months.

Q. And what, if any, connection had you had with the railroad business prior to that time?

A. I have been in the railroad business for thirty-eight years. Twenty-five years prior to my two years and eight months as agent I was chief clerk in a local freight office.

Q. Then you must be pretty well posted about the handling of L. C. L. freight at Columbus?

A. I have had considerable experience in that line.

Q. Will you tell us what the average tonnage of L. C. L. freight Columbus is on your lines?

A. Well, the average tonnage per car loaded out of Columbus is a little heavier than it is coming in. Our average tonnage
283 loaded out of there will be about 6.6 tons to the car, or more, I should say 13,300 pounds for the car; the average tonnage of cars received at Columbus will run a little less than 11,000 pounds to a car.

Mr. COLSTON: In less than carload lots?

A. In less than carload lots.

Q. What does it cost you to handle L. C. L. freight at Columbus?

A. It cost during 1904, 35.4 cents per ton.

Q. What cost does that include?

A. That includes the warehouse force and 85 per cent. of the office force, the clerical force.

Q. State whether 85 per cent. of the clerical force is used on L. C. L. business at Columbus alone?

A. Yes, at least eighty-five per cent., as near as I can figure it from my close observation.

Q. During a period of thirty years?

A. Yes, sir.

Q. Have you included anything on account of the investment in depots and insurance and risks and general expense?

A. No, sir.

Q. This cost is the actual cost of handling L. C. L. freight at Columbus?

A. At Columbus, yes, sir.

284 Cross-examination.

By Mr. GLASGOW:

Q. Do you ship any soap from your place?

A. Yes, sir, among groceries and—We have no soap factories in our place of any account.

Q. Ship any carload soap?

A. No, there are no carloads of soap shipped out of Columbus, that is, from Columbus proper.

Q. Ship less than carload?

A. Lead? No, sir.

Q. Less,—L. C. L.?

A. O, yes, sir.

Q. Out of Columbus?

A. Yes, sir, less than carloads.

Q. Costs you 35.4 cents to handle every ton of less than carload soap you ship?

A. Yes, of less than carload freight handled through the freight station.

Q. I am talking about soap, and this case is about soap?

A. I can't answer as to soap. I am not talking about that.

Q. That is what I thought. This case is about soap. You can't answer as to soap?

A. Not soap alone, no, sir. It is general merchandise we handle.

Q. And as to soap you don't know at all?

285 A. That goes in with general merchandise.

Q. And if the other costs less or more that brings soap up?

A. Some may cost less and some more.

Q. Soap may cost less than that?

A. At our station our freight is handled by tonnage.

Q. Every ton costs you the same, does it?

A. Every ton costs the same with the exception of the tally-men. Of course they are paid by the month, and if it takes longer to handle one article than another there is a little more expense there.

Q. The who?

A. Tally-man in each gang.

Q. It costs more—What did you say?

A. Some class of freight takes longer to handle, and of course while their time is going on there is a little more expense.

Q. How does the price of the cost of handling a ton of soap compare with the cost of handling a ton of brick in less than carload lots?

A. A ton of brick—Do you mean loose brick or brick in boxes or barrels?

Q. Do they ship it in boxes and barrels?

A. Yes, sir.

Q. Well, is the rate the same on it as when it is loose?

286 A. No, sir, the rate is higher when it is loose.

Q. What is the difference?

A. Why there is considerable difference in the handling of it.

Q. Well, what class is brick if it is loose in?

A. I think second class.

Q. In less than carload lots?

A. Second class, I think,—brick loose, common brick.

Q. How about enameled glazed brick? What class is that in?

A. That wouldn't be shipped loose for it wouldn't be safe to handle it in that shape.

Q. What class is that in?

A. I don't know that there is any class made on it. I am not posted in that.

Q. How would that compare in handling with soap in less than carload lots?

A. Well, if it is boxed it could be handled easier and quicker than soap could.

Q. It could?

A. A box of brick weighing a thousand pounds could be handled quicker than a thousand pounds of soap.

Q. Do you mean to say that it wouldn't cost as much to handle a box of it?

A. No, sir, I say we pay by the ton.

287 Q. I mean if you didn't pay by the ton; if you paid by the work and labor and time, would it cost as much to handle a ton of enameled brick in boxes as it would a ton of soap?

A. Would it cost as much? Yes, sir, it would cost as much to handle a box of brick as it would soap, if not more.

Q. If not more?

A. Yes, sir.

Q. You think the probabilities are that it would cost more, do you?

A. With the brick?

Q. Yes.

A. No, I think about the same. The brick would cost less than handling the soap if we were paying by the hour.

Q. Why?

A. Because a thousand pound package of brick could be handled—and they put it up in five or ten hundred pound packages—could be handled a great deal quicker into a car than a thousand pounds of soap.

Q. But as a matter of fact it costs your road the same?

A. On account of handling by tonnage.

Q. Well, it would cost you the the same to handle any ton of anything in less than carload lots as it would a ton of any other kind of thing?

A. Cost the same.

Q. Why do you put 85 per cent. of the clerical force cost of it at less than carload lots?

288 A. Well, our freight station is situated a little differently from others; we have quite a large station, 600 feet in length; it has six tracks inside of the station, each track holding twentyone cars, and there is more liability of freight going astray and things of that kind in handling you might say one hundred and twentysix cars at a time, and it requires more office work to do that work.

Q. Then it is more expensive at Columbus than it is at some other oints?

A. Well, it appears so. Not so much so as some points though.

(Adjourned until Friday, March 10, 1905, at 10 A. M.)

89 FRIDAY, *March* 10, 1905—10 a. m.

Met pursuant to adjournment.

Appearances.

W. A. Glasgow, Jr. and S. T. McPherson for the petitioner.
Lawrence Maxwell for The C. H. & D. Ry. Co. and The P. C. C. St. L. Ry. Co. and The Pennsylvania R. R. Co.
Edward Colston for The Baltimore & Ohio R. R. Co. and The altimore & Ohio Southwestern Railroad Co.
Samuel Bayliss for The C. C. C. & St. L. Ry. Co., The Lake Shore Michigan Southern Railway Co. and The New York Central & udson River Railroad Co.

Deposition of W. H. SPARKS resumed.

Redirect examination.

By Mr. MAXWELL:

Q. I wish to ask you some questions with respect to transfer of C. L. freight on your lines. Is Columbus one of your transfer ints?

A. Columbus is a transfer station. My station is known as the lumbus Transfer Station.

Q. In what cases do you transfer L. C. L. freight at Columbus? Give us illustrations?

0 A. Well, we transfer freight at Columbus from the East and from the West, that is freight from the East going to the est and from the West going to the East. Now in the case of a ipment loaded at Cincinnati for an interior point in Pennsylvania, a point in northeastern Ohio or the northwestern part of Pennsylnia, that would be loaded to Columbus Transfer. We would then ansfer it into other cars and send it to another transfer station here it would be again re-transferred and sent to destination. Somenes it is necessary to have three transfers from point of shipment destination. Now that would be—Now take a case say from Cinnati to Erie, Pa. That would be loaded to Columbus Transfer, cause Cincinnati has not enough freight to justify them in loading ar through to Erie.

Q. You are talking now all the time about L. C. L. freight?

A. L. C. L. business, yes. We would load that then to Alliance ansfer Station on the Ft. Wayne route; then Alliance Transfer uld load that to Newcastle Transfer, where it would again have to transferred and sent on to destination. Now for a point like Alna, Pa., that would be loaded to Columbus Transfer; we would load that to Pittsburgh Transfer; there it would be loaded in a car

to Altoona. Sometimes it is necessary to make two transfers, and at times three.

Q. How about shipments too from Cincinnati to New Eng-
291 land points?

A. Well, unless Cincinnati would have sufficient freight to make a through car to what is called Waverly Transfer, N. J. tthey would load it to Columbus. We would trasfer it and load it into cars to Waverly Transfer, N. J., and then it would have to be transferred there and delivered by them to H. & H. and taken on by tlhem to New England points.

Q. How general is this practice of making one, two, and tlhree transfers for shipments over your road?

A. Well, with Columbus Transfer we think that it is the gemeral practice for the reason that we get so much freight that we imagine they don't load through cars, but I couldn't answer as to that. Cincinnati might possibly load through cars to a great many points that we know nothing about at Columbus.

Q. But is the transfer of freight at Columbus large?

A. Very large, yes, sir. Our principal work is transferring.

Q. For shipments that originate at points west of Columbus and are destined for points north or east?

A. North or east, and shipments originating at points in the east and going to the west or south or northwest.

Q. So that in L. C. L. shipments that require those transfers there would be the expense of the original loading and handling, the expense of the various transfers, and the expense of the un-
292 loading for the consignee at destination as an incident to tlhose L. C. L. shipments?

A. Yes, sir.

Re-cross examination.

By Mr. GLASGOW:

Q. Mr. Sparks, let us take the question of soap. Do you have much soap to transfer in L. C. L. shipments at Columbus?

A. L. C. L. shipments? Yes, sir.

Q. Large quantity of it, is there?

A. We have for our transfer, yes, sir.

Q. Well, that is what I mean.

A. Yes.

Q. Large amounts of soap L. C. L. go through Columbus and are transferred by you?

A. Well, yes, I can say large amounts. We transfer large amounts of all classes of freight.

Q. Well, I am talking about soap now.

A. Well, I wouldn't know just what you would call a large amount. We would have in a day's business—we would have maybe a carload and a half of soap.

Q. L. C. L.?

A. From various points coming to us in different cars from all directions.

293 Q. Coming to you in less than carload lots?
A. Yes, sir, small shipments.
Q. Certainly as much as a carload and a half?
A. Yes, sir, I imagine we would have in the day's business as much as a carload and a half.
Q. Then if there is less than a carload of soap shipped from Cincinnati to Altoona, Pa., it would be first loaded at Cincinnati, transferred at Columbus by way of Pittsburgh, transferred at Pittsburgh, and then delivered at Altoona?
A. Yes, sir, unless Cincinnati might have enough of less than carload shipments, maybe ten or twelve thousand pounds,—if they have that much it would be enough to justify them in loading the car through.
Q. Well, you handle as much as a carload and a half every day at Columbus that is not sufficient to load through?
A. Yes, sir.
Q. So that if it cost 35 cents to load that at Cincinnati per hundred, and cost you 35.4 cents to transfer it at Columbus, and costs 35 cents to transfer it at Pittsburgh,——
A. I imagine their transfer would be as much as ours.
Q. And then cost 35 cents to unload it at Altoona, you would have $140?
A. Excuse me, isn't the Cincinnati transfer—the Cincinnati 31 cents in place of 35?
Q. Well, I was going by Mr. Barnard's statement that it took 35 cents to handle.
294 A. I was figuring on our own. I understood Mr. Robinett to take it 31, a little less than mine.
Q. Well, take it 31; that would make the cost of handling a ton of soap between Cincinnati and Altoona $1.36, wouldn't it? It would take $1.36 to handle a ton of soap in less than carload lots from Cincinnati to Altoona?
A. Well, according to the figures I have and the figures you give.
Q. $1.36?
A. I should think so.
Q. Have you any idea what the rate is from Cincinnati to Altoona?
A. No, sir, I have not.
Q. Is there such a rate in existence?
A. From Cincinnati to Altoona?
Q. Yes.
A. O, yes.
Q. And you don't know what it is?
A. No, sir.
Q. Can you find out?
A. By telephoning I can get the information.
Q. I wish you would give it to me after you get off the stand, please.
A. All right, sir.
Q. Does all of the freight from Cincinnati to Pennsylvania
295 or northern Ohio or New England go through Columbus?
A. By the Pennsylvania lines, yes, sir.

Q. By the Pennsylvania lines; but my question is not confined to that. It is a very simple question.

A. I can't answer it

Q. You don't know?

A. Not all freight, no, sir, out of Cincinnati, no, sir.

Q. It does not all go through?

A. I can't answer that.

Q. Is there any other way for it to go? Don't you know the lines of railroad?

A. Yes, sir, I don't know just—The Big Four could handle business in that territory without going through Columbus; it could do it; I don't know if they do or not.

Q. How about the B. & O.?

A. The B. & O. I should think would go through Columbus. Or it might not. It might go over the B. & O. S. W., south of Columbus.

Q. The B. & O. S. W., how would that be?

A. I imagine not. It would not go through Columbus.

Q. All other freight you say you don't know whether it would go through Columbus or not?

A. No, sir, I only know the Pennsylvania lines.

And further deponent saith not.

(Signature waived.)

296 T. A. CONNOR, being first duly cautioned and sworn, deposes and says as follows:

Direct examination.

By Mr. BAYLISS:

Q. Your name is T. A. Connor; give your age and residence.

A. Forty-one. Cincinnati.

Q. What is your business?

A. Local freight agent of the Big Four Railway.

Q. How long have you been occupying that position, Mr. Connor?

A. Three years.

Q. And prior to that time what was your business and where were you located?

A. Why twelve years agent of the Kankakee; six years clerk at the same point, and four years clerking at Coalfax, Ind.

Q. Kankakee, Ills.?

A. Total, twenty-five years.

Q. What railroads operate through Kankakee?

A. Indiana, Illinois & Iowa, the Illinois Central, and the Big Four.

Q. Are you familiar with the manner of handling the local freight business at Cincinnati, at its station?

A. Yes, sir.

297 Q. And under whose supervision is that work done?

A. At Cincinnati?

Q. Yes.

A. Under mine.

Q. You may state what the average tonnage is in a car of L. C. L. freight?

A. Six tons.

Q. Is that outbound or inbound or both?

A. That is both; we don't keep it separate.

Q. Now, Mr. Connor, what is the expense of the work of handling that freight in that class?

A. It acerages 31½ cents.

Q. Does that include any clerical work?

A. That includes the depot force and 75 per cent. of the clerical force of the office.

Q. Mr. Connor, in the matter of claims for loss and damage, from what class of freight do the majority of those claims come?

A. In the L. C. L.

Q. What would be the proportion of number of claims as compared with C. L. freight?

A. Well, I should say it would be in excess of 75 per cent., somewhere in that neighborhood.

Q. In the case of a damage to a car of L. C. L. freight what is required of a railway company or its agents in making examinations as to the loss and extent of loss and damage and the settlement of the claims?

298

A. Well, each and every individual case has to be investigated separately in L. C. L. freights,—any number of consignees; each consignee requires a different claim, separate claim; we have any number of cases where cars are out from fifteen to twenty claims.

Q. State whether or not you are required to trace those claims and make an examination of them, the value of the freight, and the salvage, if any, as independent claims as to each owner or consignee?

A. Yes, sir, each case has to be handled individually.

Q. Now is there a freight claim department maintained by each of the railroad companies independent of the local freight office?

A. The Big Four have one, and it is my understanding each and every road has.

Q. Now the expense of that department you speak of, the freight claim department, is that included in your estimate?

A. No, sir.

Q. Then what proportion of claims in number ought to be considered by that department in comparison with C. L. freight claims?

A. Well, I should say that the L. C. L. claims exceed the—they are in excess of 75 per cent. of the carloads. That would be I would say a fair estimate. Of course that is simply my opinion.

299

Mr. GLASGOW: You don't mean 75 per cent. of the——

A. Total claims handled, on account of L. C. L. business.

Mr. GLASGOW: That is a different proposition. He didn't state it that way.

Q. Mr. Connor, were you one of the parties to whom was delegated the ascertaining of the per centages of classified L. C. L. freight?

A. Yes, sir.

Q. What days were assigned to you?

A. The first three days of June, 1, 2 and 3.
Q. What was the result of your investigation?
A. In what way do you mean, Mr. Bayliss?
Q. What year?
A. June, 1904.
Q. State right there what days of the week those were, do you know?
A. I do not.

By Mr. COLSTON:

Q. There were no Saturdays or Sundays?
A. No, sir.
Q. 1904 that was?
A. Yes, sir.
Q. Is that the statement?
A. Yes, it shows the net revenue——
300 Mr. GLASGOW: Never mind. Wait a moment. This statement does not show any freight at all twenty per cent. less than third class.
A. Yes sir, Rule 26; right there it is.
Mr. GLASGOW: Is that what you mean by it?
A. That is the same thing, yes sir.
Mr. GLASGOW: This was made up for 1904, June 1, 2 and 3.
A. Yes sir, the first three days.

Mr. GLASGOW: This statement is objected to on the ground that it is irrelevant and immaterial and otherwise incompetent.
Mr. BAYLISS: We submit the statement in evidence.
(Said statement is hereto attached, marked "Exhibit 5" and made part hereof.)

Q. Now, Mr. Connor, taking the situation in Cincinnati, how about the freight that comes to the Big Four from the B. & O. Southwestern in the way of transfer?
A. In what way do you mean?
Q. Well, is it transferred?
A. Yes sir, it comes to us through the Cincinnati Transfer Company.
Q. And how is that transfer made?
A. By wagon.
Q. By wagon and drays?
301 A. Wagon.
Q. Now taking that freight, say in small parcels transferred in that way by the Big Four delivery, how does the expense of that transfer compare with the revenue that the Big Four receives as a rule?
A. Well, that would be a very difficult question for me to answer. The cost of the transfer—I can tell you what that amounts to. That is four cents a hundred. As to what the revenue on the shipment amounts to, I can't tell.
Q. How much is the expense of transfer?
A. Four cents a hundred.

Q. I want to ask you about the facilities for handling freight in L. C. L. lots in the Big Four.

A. I would say that ours are first class. I don't know that we have any inability whatever.

Q. How are the platforms arranged for delivery from wagons and drays?

A. In what manner do you mean?

Q. I mean your freight receiving.

A. Well, our Central Avenue house, the drays drive right in the depot and load in the depot.

Q. Are there various places for unloading along there?

A. Yes sir, we have different localities for different freight. That is, we have a certain locality for Columbus, Cleveland,——

302 Q. State whether or not that saves the handling of the freight that might be put in at one or two points?

A. It does, yes sir.

Q. How about the inbound freight?

A. We don't handle the inbound freight. We simply unload it. We unload in whatever location the cars may set opposite, it doesn't make any special difference as to what location you unload your inbound freight.

Q. Then in your opinion the Big Four can handle freight as well as it can be handled at any point?

A. I would think so.

Cross-examination.

By Mr. GLASGOW:

Q. How long have you been working for the Big Four?

A. Years? Twenty-five, sir.

Q. Twenty-five years?

A. Yes sir.

Q. The cost of handling tonnage that you have given, L. C. L. tonnage at Cincinnati, is that the cost of handling all characters of tonnage?

A. Yes sir, all classes.

Q. So under that statement it cost you just as much to handle one class of tonnage as another?

A. Well, we don't keep a separate statement of the different classes we handle.

303 Q. Answer my question, please. (Question read.)

A. No sir, I don't think it does.

Q. Then according to that statement it costs you just as much to handle one character of tonnage as another?

A. No sir, I do not think that it does.

Q. Haven't you just said so?

A. I said to you that we do not keep a separate record of the different classes of tonnage; the entire tonnage at the end of the month is bulked together.

Q. It costs you thirty one cents to handle tonnage then?

A. The total tonnage, yes sir.

Q. What character of tonnage does that apply to?
A. That includes the twelve classes.
Q. That includes the twelve classes?
A. Yes sir.
Q. Then anything that is within the twelve classes according to your statement costs you thirty one cents to handle at Cincinnati?
A. Well, I don't know as I am in a position to answer that question because we don't keep a record of it.
Q. What does that thirty one cents apply to?
A. To the entire tonnage we handle for the month.
Q. In all the classes?
A. In all the classes.
304 Q. Then anything in that class costs thirty-one cents, does it?
A. No sir, it depends on the class of freight. Some classes of freight can be handled a great deal cheaper than others.
Q. Tell me what can be handled at thirty-one cents and what can be handled cheaper.
A. Well, our total tonnage of all classes is thirty-one cents.
Q. What does it apply to?
A. I said that applied to all the classes we have, one, two, three, four, five, and Rule——
Q. I don't care about your giving the different ones if you say the twelve.
A. Yes sir.
Q. Then anything in those classes costs you thirty-one cents, does it, if that applies to all the classes?
A. All the classes taken together, yes sir, it costs thirty-one cents.
Q. Anything in there costs you thirty-one cents?
A. Our record shows it costs thirty-one cents per ton.
Q. Does it cost you as much to handle glazed brick in boxes as it does the soap in boxes?
A. I don't think so.
Q. Which costs the most?
305 A. I would say that the soap costs the most.
Q. Why?
A. Because the brick is as a rule shipped in packages that are heavier, and a greater number of tonnage can be handled in the same amount of time than there can of soap.
Q. So that it costs you more then to handle soap?
A. I would say so.
Q. Does it cost you more or less than thirty-one cents to handle soap?
A. Well, I don't know as I could answer that question.
Q. Didn't you say just now that it cost you thirty-one cents to handle every character of traffic embraced in the twelve classes?
A. Yes sir, the total.
Q. Well, if all of them cost you thirty-one cents doesn't it cost you the same to handle any two that are in those classes?
A. No. That is the percentage of the whole thing is thirty-one

cents. I said there are different classes that you could handle cheaper than others; for instance, you cited the brick and the soap.

Q. Then when we come to a case involving soap that thirty-one cents does not correctly show what it costs to handle soap, does it?

A. Well, we don't keep any special——

306 Q. Answer my question. Does it correctly or not?

A. I will ask to have you repeat the question. (Question read.) Our statement doesn't state what it costs to handle any specific class of tonnage.

Q. Will you answer my question?

A. Well, I don't know that I could answer your question positively as to what it actually cost to handle soap because we don't keep it separately. If we did I would be glad to do so.

Q. I ask you does the thirty-one cents accurately show what it costs you to handle a ton of soap in your station. If you don't know, please say so.

A. I don't know, sir.

Q. Then as far as your statement is concerned, it is a mere estimate or average of what all characters of freight figure out to cost on a percentage basis?

A. Yes sir.

Q. And you don't undertake in that statement to show what it costs to handle soap in comparison with other——

A. We do not, no sir.

Q. And you can't do it, can you?

A. Well, it could be done but it is not required and never has been done. I suppose we could.

Q. Could you do it upon the figures that you now have in your office?

A. Could not, no sir.

307 Q. Then you can't do it, can you?

A. No sir, not on business that we have handled in the past.

Q. That is what I say. How much does it cost to handle bath brick compared with the cost of handling soap in less than carload lots?

A. What kind of brick?

Q. Bath brick.

A. I don't know what kind of brick that is.

Q. Well, barbed wire; you know what that is?

A. Yes sir.

Q. How much does it cost to handle barbed wire compared with soap in less than carload lots?

A. Well, I wouldn't think there was a great deal of difference.

Q. About the same?

A. Somewhere in the neighborhood I should say.

Q. How would the cost of handling coal tar compare with soap?

A. You can handle coaltar cheaper. The soap is in packages of sixty pounds to the box as a rule, and the company have to load it on the truck, haul it to the car, and unload it piece by piece; and the coaltar you haul the individual barrel to the car and dump it

when you get it to the car. It doesn't require as much time to handle it.

308 Q. How does the convenience of packing in a car compare between the two? Can you load more soap into a car than you can coaltar?

A. In barrels?

Q. That is the way they ship it, isn't it.

A. As a rule. The weight.—No sir, you cannot. I don't think so.

Q. Handle about the same?

A. Somewhere in the neighborhood. I would say that the coaltar is in excess of the soap.

Q. You can put more coaltar in a car than you can soap?

A. I will take that back. No sir. I don't think so.

Q. It is the other way, isn't it?

A. Well, I don't think there is a great deal of difference according to my idea.

Q. There isn't much difference?

A. I would say so.

Q. How about horse-shoe nails now in comparison, as to expense of handling—horse-shoe nails and soap in less than carload lots?

Mr. MAXWELL: I object to the question on the ground that it is not proper cross-examination of this witness, whose testimony has been directed to a comparison in the cost of handling C. L. and L. C. L. soap.

Mr. GLASGOW: This witness has been put on the stand to testify as to the cost of handling L. C. L. freight at his station, and
309 the cross-examination is made for the purpose of showing what he knows about handling specific articles which are a part of his general statement.

Q. How about the expense of handling bridge iron in comparison with soap?

A. Bridge iron is not handled L. C. L., at least I have never seen any; if it is it is a rarity.

Q. Don't your tariff sheets provide for it?

A. I presume they do, yes sir.

Q. You have never seen a shipment of it?

A. Well, they are a rarity that go L. C. L. I presume there are th-ough shipments.

Q. How about the comparative expense?

A. You can handle the bridge iron cheaper.

Q. Can handle it cheaper?

A. I would say so.

Q. How about loading, can you load more conveniently? You can load bridge iron more conveniently than you can soap?

A. I think so. You can load more of it in a space of time than you can soap, more tonnage.

Q. How about cotton ties? Can you load them as cheap or cheaper than soap in less than carload lots?

A. Well, I don't know anything about cotton ties. I wouldn't want to make an estimate of it.

Q. How about corrugated sheet iron, can you load that as cheap or cheaper than soap?

310 A. You can load it fully as cheap.

Q. About the same, or less?

A. The same, I would say, yes, sir.

Q. How about crowbars, can you load them about the same or less?

A. Boxed?

Q. Well, boxed or not boxed, either way you want to put it.

A. If they were loaded in barrels, etc., I would want to take the crowbars.

Q. Why?

A. Because the tonnage is heavier in separate pieces.

Q. If they are in boxes it doesn't make any difference to you whether they are in separate pieces or not.

A. Well, if they are in boxes their weight is heavier than a box of soap. A box of soap will average about sixty pounds.

Q. How about jute? Can you handle that as cheap or cheaper than soap in less than carload lots?

A. Well, I haven't had a great deal of experience with that. I wouldn't care to make an estimate on that either.

Q. Well, you don't know very well what it does cost to handle a specific character of freight then, do you?

A. Yes, as a rule I do.

311 How about paints, dry, can you handle them cheaper than you can soap?

A. You can, yes, sir.

Q. You say that you can load less than carloads six tons to the car?

A. Yes, sir, that is about what it averages.

Q. Average?

A. Yes, sir, that is taking the entire less than carload business that we handle.

Q. How about shipments of soap, can't you load more than that?

A. How do you mean, L. C. L.?

Q. Yes.

A. In one car?

Q. Well, that is what you were talking about, isn't it?

A. Yes, one car. We could if we had that much soap at any one time to go to any one point.

Q. Well, you were talking about having six tons to put in a car to go to some point.

A. Yes, you can get six tons of soap in a car all right.

Q. You can get more than that, can't you?

A. Yes, sir.

Q. You can get double that?

A. Well, a car of soap as a rule will average about 35,000 lbs.

Q. That is how much, how many tons?

312 A. 17½.

Q. 17½ tons?

A. Yes, sir.

Q. So of soap you can get nearly three times the amount in that you estimate an average?

A. In a carload, yes.

Q. What business does the freight claim department handle other than claims for damage to less than carload shipments?

A. Shipments that are lost in transit, shipments that are damaged by fire, any shipments that may be delivered to consignees with exceptions notes against them.

Q. You wouldn't need any freight claim department if you didn't have less than carload shipments, would you?

A. Yes, sir, you probably would a certain portion of it.

Q. Need the department still? What portion of it?

A. Well, I would say about twenty-five per cent. of it. It might be that they could handle it in another department if they didn't require the L. C. L. business to be handled.

Q. How much freight did you handle last year in L. C. L. shipments in your department?

A. I haven't got that here, sir.

Q. How much did you handle in your carload shipments?

A. I haven't got that either.

Q. Do you count in handling carload shipments anything that originates elsewhere than in Cincinnati?

313 A. In our tonnage?

Q. Yes.

A. Our total tonnage includes any business delivered us from connections or from Cincinnati proper that is rebilled at the station.

Redirect examination.

By Mr. BAYLISS:

Q. You have been asked about the different classes of freight in connection with soap and other articles; state whether or not soap in your judgment—the expense of handling soap is about a fair average expense of handling all classes of L. C. L. freight?

Mr. GLASGOW: I object, as the witness has already stated that he cannot tell the cost of handling soap, and if he cannot tell the cost it is impossible for him to tell whether it is an average.

A. Well, I would say it was. Possibly——

Mr. GLASGOW: What did you say?

A. Yes, sir.

Q. Now in regard to the freight claim department, Mr. Connor, state about how many men or clerks are employed in the freight claim department of the Big Four Railroad Company at Cincinnati?

A. At Cincinnati they have fifty-three.

Q. And what per cent. of that work or labor is occasioned

314 by the handling of L. C. L. freight?

(Objected to as repetition by counsel for petitioner. Question withdrawn.)

By Mr. COLSTON:

Q. You never shipped a carload of soap L. C. L., did you?
A. No. Of course if it is a carload, of course it would take a carload rating.
Q. And these shipments of soap L. C. L. are shipped along with other masses of freight that come in at the same point?
A. Yes, sir.

Recross-examination.

By Mr. GLASGOW:

Q. You say you never shipped soap to different consignees at the same point L. C. L., sufficient to make up a car?
A. No, sir, not to my knowledge. I don't think we ever did.
Q. You would do it if you had a chance, I suppose?
A. There wouldn't be any objection to it.
Q. It would be to your advantage to do it, wouldn't it?
A. Yes, sir.
Q. You told me that you didn't know and couldn't tell
315 me the cost of handling soap per hundred in your station, didn't you?
A. Accurately, yes, sir, I did.
Q. Now will you please tell me how you can say then if you don't know the cost of handling soap that that is a fair average of all freight that you handle?
A. I said that was according to my estimate.
Q. Well, how can you say that if you don't know the cost?
A. Well, judging of the different tonnage that we handle, which would be simply an estimate altogether, because we have no way of telling accurately.
Q. You have nothing to base your estimate on, have you?
A. No, sir, I have not, sir.
Q. It is a mere guess, is it?
A. It is a matter of opinion.
Q. A guess, isn't it?
A. To a certain extent, I would say.
Q. And without anything to base it on?
A. You might say so.

Redirect examination.

By Mr. COLSTON:

Q. You can't tell the cost of shipping any separate article?
A. No, sir, we don't keep it.
316 Q. Make no effort to do it?
A. No, sir.
Q. You simply average this, make this cost as an average of all your shipments?
A. Yes, sir.
Q. Some are more than soap, some are less than soap?
A. It varies.

Recross examination.

By Mr. GLASGOW:

Q. What is less than soap?
A. I don't know as I could tell you.
Q. Didn't you say some more and some less?
A. Yes, sir, but as to designating what commodities they are I can't do it.

Mr. COLSTON: You have asked him about a number of articles that he has said it would cost less to handle than soap, and I object——

The WITNESS: We have less shipments of coal tar and pig-iron—not pig-iron but brick,——
Q. Less of it shipped?
A. Yes, sir.
Q. That isn't what we are talking about.
A. You asked me that question.
Q. No, I asked what is it that costs you less to handle than soap.
A. Well, that same question there will apply to that,
317 coal-tar.
Mr. COLSTON: Bath brick?
A. Brick, etc., in barrels.
Mr. COLSTON: I want the Bath brick in.
The WITNESS: I said I didn't understand what Bath brick is.
Mr. GLASGOW: Just add at the bottom that it costs less to ship Bath brick but he don't know what Bath brick is.
The WITNESS: No, I didn't say that. I said I don't know what Bath brick is. I didn't make the statement that we handled Bath brick; I said brick, common brick.

Aand further deponent saith not.
(Signature waived.)

318 CHARLES E. FISH, being first duly cautioned and sworn, deposes and says as follows:

Direct examination.

By Mr. MAXWELL:

Q. What is your age, residence, and occupation?
A. Age, forty-five; residence, Cincinnati; occupation, local freight agent of the B. & O. S. W. R. R.
Q. How long have you been the freight agent of the B. & O. S. W. Ry. at Cincinnati?
A. Six years.
Q. What experience had you had in the railroad business prior to that time?
A. I have done almost everything in the line of handling freights through freight depots and terminals. I started in as section man, trucked freight, picked freight, stored freight, received freight, delivered it, been check man, foreman, depot master, agent.

Q. Then you have had a great deal of experience and are quite familiar with the handling of L. C. L. freight?

A. I think so.

Q. What are your duties in that respect as freight agent of your company at Cincinnati?

A. To supervise the handling of the business at the station.

319 Q. And do you keep the accounts of the——

A. Yes, sir.

Q. What is the average L. C. L. tonnage at your station?

A. Per car?

Q. Yes.

A. 12,000 lbs.

Q. What is the cost of handling L. C. L. freight at your station?

A. 36.31 cents per ton.

Q. What does that include?

A. Includes the depot force and 75 per cent. of the office force under my charge.

Q. Why do you ascribe 75 per cent. of the office force under your charge to L. C. L. freight?

A. Because in my opinion 75 per cent. of the office force is chargeable to the handling of L. C. L. freight.

Q. What is the character of the facilities of your company at Cincinnati for handling L. C. L. freight?

A. The best of any in the United States.

Q. Do you keep a separate account of what it costs to handle a ton of each particular class of L. C. L. freight?

A. No, sir.

Q. I suppose that some classes cost a little more and some a little less than others?

A. Yes, sir.

320 Q. What would you say about soap? Is soap in respect to the cost of handling it above or below the general average of all classes of L. C. L. freight?

A. It is about a general average of all classes.

Q. Is it necessary to make transfers of L. C. L. shipments that your road handles?

A. Yes, sir.

Q. Please give us an illustration of what class of L. C. L. freight you have to transfer in addition to receiving it from the shipper and unloading it for the consignee.

A. I can't pick out any special class. It is a general class of merchandise of L. C. L. freight that would be loaded for transfer points, if you didn't have a sufficient quantity of freight to warrant the loading of a car for final destination.

Q. Now please tell us what points on your road and the B. & O. where it is the practice to make one or more transfers in the course of shipment of L. C. L.

A. We have a transfer at Flora, Ills.; we have one at Chillicothe; Parkersburg; Brunswick, Md.; Cumberland, Md.; and Rutherford Transfer, Pa.

Mr. COLSTON: How about East St. Louis?

A. That is not a transfer; that is the terminus of the line.

Q. Do you transfer at Cincinnati freight that is received by you there for shipment to destination over other lines, or received by you from other lines for destination on your own line?

321 A. Well, there is no transfer at Cincinnati on business from connections at Cincinnati. The transfer at Cincinnati is for business from the West going East by our own line, or from the East going West by our own line.

Q. Do I understand that where you receive from points in the East L. C. L. freight over your line destined to western points over your own line, that you make transfers of such freight at Cincinnati?

A. Yes, sir.

Q. You speak of the transfer at Flora. Give us an illustration of the L. C. L. freight that would be transferred at that point. Tell us where it might originate and where it would be destined.

A. There is a certain set of rules laid down by the transportation department of the B. & O. and the B. & O. S. W. with reference to the handling of the L. C. L. merchandise.

Mr. GLASGOW: Have you got those rules with you?

A. I have not.

Mr. GLASGOW: Objection is made to the witness' stating what the rules are. They are printed rules, are they?

A. Yes, sir.

Q. Go ahead.

A. For instance, New York would have a shipment for Shawneetown, Ills. He would load that shipment to Cincinnati and

322 if I did not have a sufficient amount of tonnage to warrant the running of a straight car through to Shawneetown as laid down by the transportation department of our company I would load them to Flora, Ills., and Flora would transfer it either into a straight car going to Shawneetown or into his local way-car which runs between Flora and Shawneetown.

Q. Suppose a shipper at Columbus, Ohio, were to deliver to your company some L. C. L. soap for shipment to Shawneetown, Ills., how would that shipment be handled in respect to transfer?

A. If Columbus did not have a sufficient amount of tonnage offered at one day to run a straight car through to Shawneetown in accordance with the transportation instructions he would load that to Cincinnati; and if I did not have a sufficient tonnage to warrant the running of a car through to Shawneetown, I would load the freight to Flora; and Flora, if he did not have a sufficient amount of freight to warrant the runnig of a car to Shawneetown, would load it in his way-car.

Q. Then that L. C. L. shipment of soap would be loaded at Columbus, might be transferred at Cincinnati, and again transferred at Flora?

A. Yes, sir.

Q. Suppose L. C. L. soap were shipped on your line at

323 Zanesville, Ohio, which is a place at which there are soap factories, destined to Shawneetown or some other interior point in Illinois; how would that be handled?

A. If Zanesville did not have a sufficient amount of freight to warrant the running of a car through to Shawneetown, he would load it to Newark Transfer; if Newark Transfer did not have sufficient freight to warrant the running of a car through to Shawneetown, he would load it to Cincinnati; if Cincinnati did not have a sufficient amount of freight to warrant the running of a car through to Shawneetown, it would be loaded to Flora; and if Flora didn't have a sufficient amount of tonnage to run a straight car through to Shawneetown, it would be loaded in the way-car. That is all under the instructions of the transportation department.

Q. In that case there would be the original loading and the unloading and four transfers?

A. Yes, sir.

Q. Now are those instances of one, two, three and four transfers, common?

A. I couldn't answer that, sir. I don't know.

Q. It depends upon what the business of the day happens to be?

A. Yes, sir.

Q. To what extent do you make transfers at your station?

A. We will handle on an average of 120 tons a day of
324 through business, that is handled either from the West going east, or from the East west.

Mr. COLSTON: That is all L. C. L.?

A. All L. C. L., yes.

Q. Do you mean there would be 120 tons a day that would require transfer?

A. Yes, sir, they come to me in seventy-five or eighty cars, and I would load them out in possibly the same number of cars.

Q. Or it might be a greater or less number?

A. Yes, might be into a hundred cars.

Q. Depending upon where the freight was destined to?

A. Yes, sir.

Q. Did you enter into the arrangement with three other roads here to ascertain the percentage of the various classes of L. C. L. freight?

A. Yes, sir.

Q. What days were assigned to you?

A. June 14, 15 and 16, 1904.

Q. Is June a fair average month to ascertain such percentages?

A. It is.

Q. Is there any particular reason why those three days were given to you?

A. No, no particular reason; just happened to be allotted to me.

325 Q. Let us have the statement of the percentage of the various classes of L. C. L. freight of those days at your Cincinnati station.

(The witness produces statement.)

Mr. MAXWELL: I offer it in evidence.

(Said statement is hereto attached marked "Exhibit 6," and made part hereof.)

The WITNESS: That is figured out each day by itself and the total is the general average.

Q. Based on those percentages of different classes of L. C. L. freight, have you made a statement showing the comparative revenue of C. L. and L. C. L. cars on the basis also of the average tonnage of L. C. L. cars?

A. Not the revenue. I have got the average tonnage.

Cross-examination on the *voir dire*.

By Mr. GLASGOW:

Q. Did you make this statement up yourself?

A. No, sir.

Q. Who made it up?

A. A clerk in my office.

Q. Did you verify it?

A. Yes, sir.

Q. How did you verify it?

A. From the original report that was made up by the clerk that I delegated.

326 Q. You didn't make up that report either, did you?

A. No, sir.

Q. You don't know from your own knowledge except from the information you got from him as to the correctness of this?

A. No, sir.

Mr. GLASGOW: This paper is objected to on the ground that the witness is not competent, he not being the party who made it up; and further that it is immaterial and irrelevant.

Direct examination resumed.

By Mr. MAXWELL:

Q. Was the statement just referred to, "Exhibit 6," made up under your direction?

A. Yes, sir.

Q. From what?

A. From the original billing tickets covering the freight that was handled out of my station during the days of June 14, 15 and 16, 1904.

Q. Are those original billing tickets part of the daily records of your office?

A. Yes, sir.

Q. Did you direct the clerk who made this statement to take those tickets and take the figures from them?

A. Yes, sir.

327 Q. You didn't do the actual clerical work?

A. No, sir.

Q. But it was done by your clerk under your direction?

A. Yes, sir.

Q. More than one clerk?

A. One clerk.

Q. Are these tickets that you have referred to used in the making out of bills of lading?

A. They are used for making out the waybills. They are an exact copy of the bill of lading or the shipping receipt.

Q. And they show the different items that you have received, the weight and the destination and the class?

A. Yes, sir.

Q. And your entire business in settlement with your connecting lines and your customers is on the basis of those tickets?

A. Yes, sir.

Mr. COLSTON: Did I understand you to say that your average load of L. C. L. freight was 12 tons to the car?

A. 12,000 lbs.

Mr. COLSTON: I misunderstood you, I thought you said 12 tons; that is about six tons then?

A. Yes, sir.

328 Cross-examination.

By Mr. GLASGOW:

Q. You have charge of all of the receipts and disbursements of that office, have you?

A. Yes, sir.

Q. How did the revenues of that office compare in the year 1903 with 1899 and 1900?

A. I couldn't tell you.

Q. Were you there in 1899 and 1900?

A. Yes, sir.

Q. Can't you say whether it was greater or less?

A. No, sir.

Q. You don't know?

A. I don't know. I haven't the figures.

Q. Well, I understand you can't tell me accurately to the dollar, but can't you give me an idea as to whether the receipts of your office have increased or decreased since 1899?

A. They have increased.

Q. They have increased?

A. Yes, sir.

Q. Increased since 1901?

A. Yes.

Q. Increased since 1902?

A. The total for the year would show an increase over 1902 as far as my station is concerned.

329 Q. Increase of 1904 over 1930?

A. Yes.

Q. What is that due to?

A. Good railroad. Due to a good railroad.

Q. What do you mean by a good railroad?

A. Handle business.

Q. Well, are there any other good railroads in Cincinnati?

A. I haven't said there wasn't.

Q. No, but I want you to say that there are.
A. Sure.
Q. Mr. Fish, what is that increase due to, to increased rates or what?
A. It is due to the increased business handled.
Q. Well, any of it due to increased rates?
A. I presume so.
Q. Rates have increased, haven't they?
A. Yes, sir.
Q. Does it cost you just as much now to handle L. C. I. tonnage in your station as it did in 1900?
A. More.
Q. How about 1901?
A. Costs more.
Q. Costs you more? Why?
A. On account of the labor force not being in demand as it was in previous years.
Q. On account of what?
330 A. The labor force.
Q. Not being in demand?
A. Yes, sir.
Q. Do you mean that wages are higher?
A. No, the men are more scarce and they are more independent.
Q. Don't you pay by the tonnage?
A. No, sir.
Q. What do you pay by?
A. By the hour.
Q. Does it cost you any more by the hour now than it did in 1900 or 1899?
A. Yes, sir.
Q. How much increase has there been?
A. A cent an hour.
Q. Then can you give me an idea what it cost you to handle freight by the hundred, L. C. L., in 1899?
A. I can't without the figures, not without my report.
Q. In 1900?
A. Not without my report.
Q. Cincinnati is a distributing point for freight from the East west, isn't it?
A. A certain amount of it, yes, sir.
Q. Well, the other amount that it is not a distributing point for, how does that come?
A. Goes through.
331 Q. Then there is freight that goes through from the East to the West in less than carload lots that is not transferred at Cincinnati?
A. Yes, sir.
Q. But such freight as cannot be put through in through cars is transferred at Cincinnati?
A. Yes, sir.
Q. Where is the transfer made?

A. At Cincinnati.
Q. Well, I know, but Cincinnati is a pretty big place.
A. At the depot.
Q. Yes, at your depot?
A. Yes, sir.
Q. Is there but one place, one point in the city where that transfer is made, or do you have several stations?
A. L. C. L. merchandise is handled all at one place, that is, the L. C. L. merchandise that is under my supervision.
Q. Is it handled from one track to the other across the platform?
A. Yes, sir.
Q. There is no wagon hauling, is there?
A. Not on the through business from the East to the West by our line.
Q. In making up your freight rates I suppose you take into consideration the cost of the transfer at points where it has
332 to be transferred?
A. I don't make the rates.
Q. Well, that is a fact, isn't it?
Mr. COLSTON: Well, do you know? If you don't know say so.
A. I don't know. I can't answer that.
Q. Sir?
A. I don't know what they consider in making up the rates, covering——
Q. They take into consideration the cost of hauling it, don't they?
A. That is for the traffic department to answer.
Q. Don't you give out rates?
A. No, sir.
Q. You don't give a man any rate on anything in shipments?
A. No, sir.
Q. Don't you quote rates?
A. I do not.
Q. Who does that?
A. The general agent.
Q. The general agent?
A. Or his assistants.
Q. A man can't come to you who wants to make a shipment at the freight station or your station and get a quotation on a shipment to Altoona, Pa.?
A. Not from me he can't.
333 Q. He can't?
A. No, sir.
Q. You know what the rates are, I suppose?
A. No.
Q. How do you know what to charge?
A. We have tariffs.
Q. Well, I suppose so. You have tariffs, haven't you?
A. My assistants have the tariffs.
Q. Well, haven't you?
A. No, sir.

Q. Haven't you got access to them?
A. Yes, sir.
Q. You know what they are, don't you?
A. When I see them.
Q. And you can tell what the rate is?
A. When I see it, yes, sir.
Q. Well, don't you know that in making rates on shipments east and west passing through Cincinnati that the cost of transfer is taken into consideration in fixing the rate?
A. Not on business going east and west by our own line I don't——
Q. It is not?
A. No, sir, there is no transfer there.
Q. There is no transfer there?
A. As far as our line is concerned, that is, there is no drayage transfer.

334 Q. Well, I understand that, but you have to pay for transferring it, don't you?
A. Yes, sir.
Q. You don't give that to the shipper, do you? Don't you charge him with it?
A. They name him a rate from the point of shipment to destination.
Q. Which includes the transfer, does it?
A. Yes, sir, when by our own line.
Q. That 36.31 cents that you say per ton, cost of handling, is the average cost of handling all shipments of every kind in less than carload lots?
A. It is for the cost of L. C. L. shipments.
Q. And you can't tell me what would be the cost of handling any specific article?
A. No.
Q. You can't tell me the relative costs of handling any two or more specific articles?
A. No, sir.
Q. You have got the best facilities for handling freight in the United States at that station?
A. In my opinion.
Q. Well, can you explain why it is that the Big Four can handle their business here at 31 cents, six cents less than you can handle yours?
A. No, sir, I cannot.

335 Q. Your facilities are just as good as theirs, are not they?
A. I said it was better.
Q. Rates of wages are the same, are not they?
A. Yes, sir.

Redirect examination.

By Mr. COLSTON:

Q. Has your business increased year by year since 1899 so as to make your revenue larger at your station?

A. Yes, sir, the merchandise business.
Q. I mean these L. C. L carloads.
A. Yes, sir.
Q. Well, you talked about—you said that part of the increased revenue was due to—in some extent to increase in the rates; has there been any increase in the rate on soap since January 1, 1900, that you know of?
A. I don't know.
Q. When you said that the rate included the transfer at Cincinnati did you mean any more than that there was no extra charge for transfer made to the shipper at Cincinnati for L. C. L. goods?
A. No charge made for the handling of business east or west bound on our own line.
Q. No extra charge?
A. No, sir.
336 Q. And you don't take part in making the rates of the road?
A. No, sir.
Q. Don't know how they are made?
A. No, sir.
Q. Don't know what factors or what considerations they take into account when the rates are made, do you?
A. No, sir.
Q. All you know is what is shown on the tariff sheets?
A. Yes, sir.

Re-cross examination.

By Mr. GLASGOW:

Q. Has there been any increase in the classification putting soap in the carload list in the higher classification since January 1, 1899?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. You don't know anything about whether there have been increases or decreases in rates on soap since 1887, do you?
A. No, sir.

And further deponent saith not.
(Signature waived.)

337 J. D. FIDLER, being first duly cautioned and sworn, deposes and says as follows:

Direct examination.

By Mr. MAXWELL:

Q. What is your age, residence and occupation?
A. My age is thirty-seven years; residence, St. Louis, Mo.; and I am at present chief clerk of the Baltimore & Ohio Southwestern Railroad at East St. Louis freight station.
Q. How long have you been in that position?

A. Two years.

Q. What experience in the railroad business did you have prior to that time?

A. Some sixteen years.

Q. In what capacities and where?

A. As clerk for the Dayton & Union Road at Arcanum, O., Greenville, O., agent for the then O. I. & W. road and Big Four at Arcanum, O., Danville, Ills., and Troy, O., agent for the Detroit Southern Road at Washington C. H., O., agent for the Toledo, St. Louis & Western at East St. Louis, Ills., and between that time and my present position one year with the—at the head of the Southern Inspection Bureau at East St. Louis.

Q. Have these various positions made you familiar with the handling of L. C. L. freight?

338 A. I believe so.

Q. What is the cost per ton of the handling of L. C. L. freight at East St. Louis, at your station?

A. The cost during the year 1904 was 49.1 cents per ton.

Q. What does that include?

A. The entire platform expense and 75 per cent. of the clerical expense of the office.

Q. Why do you attribute 75 per sent. of the clerical work of your office to L. C. L. freight?

A. Because we believe that the handling of the L. C. L. freight costs us fully 75 per cent. of our office expense.

Q. What sort of facilities do you have at your station at East St. Louis for the handling of L. C. L. freight?

A. Excellent.

Q. Do you keep a separate record of the cost of handling L. C. L. soap?

A. No, sir.

Q. I suppose that is impracticable, impossible?

A. Well, I rather think it would be; at any rate, it would cost us more money than we are willing to spend.

Q. You could not keep a separate set of pickers and shovers for L. C. L. soap?

A. That would be entirely impracticable.

Q. And if you did it would cost a good deal more than

339 the general average?

A. Entirely so.

Q. And you don't keep separate clerks to look after the clerical work of L. C. L. soap?

A. No, sir.

Q. I suppose that some classes of L. C. L. freight cost more and some classes less than the general average for station handling?

A. They undoubtedly do.

Q. Well, now take soap, would you say that the cost of handling soap was above or below the general average for handling all classes of L. C. L. freight?

A. I believe that soap—taking soap as a general average is fair.

Q. Is there a distinction in the convenience of handling of different kinds of soap (freight)?

A. There is, yes, sir.

Q. But taking all classes of soap L. C. L., would you say that the cost and convenience of handling it was above or below the average cost and convenience of all classes?

A. I believe it is about the average of cost of all classes.

Q. What is the average tonnage per car of L. C. L. freight at your station?

A. The average tonnage per car inbound is slightly below
340 seven tons, outbound slightly below six; I haven't the exact figures right here.

Q. Do you do any transferring at your station?

A. We do some.

Q. And illustrate in what cases you do transferring?

A. Certain consignees in St. Louis instruct us to deliver their freight in L. C. L. lots to the Terminal Railroad Association for delivery at their Twelfth Street Station in St. Louis. That freight we re-handle on our platform after it has been unloaded, load it in the cars and card them for the Twelfth St. house, St. Louis.

Q. And how do you make those transfers at East St. Louis?

A. We on receipt of the freight unload it from the cars in order to check it, and after we have determined that the shipments are complete, re-load them in cars for St. Louis.

Q. This freight that you thus transfer at East St. Louis is subjected to this expense of the transfer?

A. Yes, sir.

Q. Do you charge your consignees for that?

A. No, sir.

Q. Do you make any wagon transfers at East St. Louis?

A. All freight for St. Louis and points beyond is transferred either by wagon or by car as I illustrated a moment ago. I should say that perhaps 80 per cent. of the freight for points beyond is
341 transferred by wagon to the connecting lines, and possibly an equal percentage of St. Louis business is transferred by wagon, perhaps even more to St. Louis.

Q. Are you familiar with the transfers that occur in the ordinary course of business at other points on your line, Flora (Cincinnati, Chillicothe, and so on?

A. I know from examination of waybills coming to us that transfers have been made at various points as shown by the records at various points on the bills.

Q. When transfers are made is that recorded on the waybill?

A. That is recorded on the waybill, yes, sir.

By Mr. COLSTON:

Q. In handling soap L. C. L. shipments are more cars necessary than are required in some other shipments of L. C. L. traffic?

A. Yes, sir.

Q. Why is that so?

A. Largely on account of the manner in which soap as a general

proposition is forwarded. The packages are usually constructed of soft light material, and for that reason it is necessary for the truckers to be more careful or they will break the package.

Q. The contents of the package, do you know how much it is ordinarily, of soap?

342 Q. That is, just what the boxes contain?

Q. What about the weight?

A. O! Well, I think there is very much variation in that regard.

Q. About what would be the average?

A. Possibly about sixty pounds.

Q. Nowadays and since ten or twelve years ago the soap shippers are charged for the package, for the weight of the box as well as the weight of the soap, are they not?

A. They are certainly presumed to be.

Q. That makes it to their interest to make the box as light as possible?

A. Exactly.

Q. Some danger of this soap breaking out of the box if it is all light material that is handled, isn't there?

A. Yes, sir.

Cross-examination.

By Mr. GLASGOW:

Q. Why do they note on the waybills where the transfers are made?

A. As a matter of record.

Q. For what purpose?

A. To, in case a shipment should be damaged or short, determine where that car was loaded and what was loaded in it.

343 Q. These transfers that you speak of by wagon at East St. Louis, is that all embraced in the freight rate, the cost of it?

A. No, sir.

Q. Who pays it?

A. The consignee.

Q. Yes, the consignee then pays the cost of transfer at East St. Louis in addition to the freight rate?

A. Yes, sir.

Q. That is true of all the transfers you make?

A. No, sir, it is true of the transfers we make at East St. Louis.

Q. I say of all the transfers you make at East St. Louis?

A. Yes, sir.

Q. So then the cost of transfer at East St. Louis costs your road nothing?

A. That is a fact.

Q. That is right, isn't it?

A. Yes, sir.

Q. Do you mean to say that it costs you 49.1 cents to take a ton of soap from your platform and put it in the car? Explain that, please.

A. Simply because we are certain from experience gained in years

that the handling of a ton of soap is probably a fair average of the cost per ton based on the time it takes to handle it as com-
344 pared with other commodities.

Q. We are not dealing in probabilities now. We are dealing in facts. And I want you to tell me whether you know as a fact that it will cost your company 49.1 cents to have a ton of soap delivered on your platform by the side of the car and put it in a car?

A. My belief is that it does.

Q. Yes, sir, what is your belief based on?

A. My experience in the past eighteen years in handling L. C. L. business.

Q. But you have never kept separate the price of handling soap?

A. Exactly.

Q. We are talking about soap and not about other characters of traffic. We are talking about soap, and I want you to tell me if you don't know and have kept no record to show what it costs to handle soap how you can say it costs 49.1 cents to handle one ton of soap?

A. It is quite true that I have no records to show the actual cost of handling soap as a commodity in itself.

Q. You have nothing to show what the comparative cost of handling soap with other characters of traffic is?

A. No, that is true.

Q. Why is it?—What peculiar condition is there at East St. Louis that costs you 49.1 cents per ton for handling L. C. L. traffic
345 when it costs your same road 36.31 cents per ton at Cincinnati?

A. The extra handling of the freight to be loaded on the transfer wagons for St. Louis, and the extra handling of the freight to be loaded in cars for St. Louis, makes the difference.

Q. Don't they do all that here in transferring?

A. I think not.

Q. The rates of wages are the same, are not they?

A. I am not prepared to say.

Q. The consignee pays for that putting in the wagons, don't he?

A. No, sir.

Q. I thought you said that he paid for the transfer by wagon?

A. I didn't say that, I said he paid for the transfer. Possibly we misunderstand each other. We understand the word "transfer" at St. Louis to mean the transfer charge across the river, and that the consignee pays. If you speak of the cost of loading it on wagons, that cost falls on our company.

Q. Who pays for the wagons?

A. We have a large corporation there who furnishes those wagons and makes a certain charge per hundred pounds.

Q. Who pays it?

346 A. The consignee, but we put it on the wagon.

Q. Yes, like you put it in your station. If the wagon wasn't there you would put it in your station?

A. We put it in the station anyway whether the wagon is there or not, and then load it on the wagon.

Q. And that is all covered by the freight rate?

A. Yes, sir.

Q. There hasn't been any difference in the way it has been handled there in the last four or five years, has there?

A. Not to my knowledge, except that there has been some increase in the cost of labor in the last four or five years.

Q. There has been some increase in rates, too, hasn't there?

A. In the last five years perhaps there has.

Q. Yes.

A. On some commodities.

Q. On some commodities,—hasn't there been almost a universal increase—slight increase, if you want to put it—in freight rates in classifications?

A. Not that I know of, no, sir.

Q. Hasn't there been a general increase in freight rates in the last five years?

A. I don't think so.

Q. There hasn't?

A. I don't think so.

347 Q. Do you know about freight rates?

A. I don't pretend to keep posted on them thoroughly; that is not a part of my business at the present time.

Q. According to your statement of 49.1 cents for handling traffic in less than carload lots that same cost would apply to every character of traffic handled, whether soap, or stone, or brick, or iron, or steel or tar or whatever it may be,—the same cost, wouldn't it?

A. Yes, sir, in less than carload.

Q. So there is nothing in handling soap which would make that more expensive than handling other characters of traffic which you say—all of which costs 49.1 cents. Isn't that true?

A. No, sir.

Q. There is nothing?

A. No, sir, I said that was not true.

Q. Well, then tell me what?

A. Very heavy commodities, in packages of large size——

Q. State what——

Mr. COLSTON: Wait and let him finish this.

A. ——can be handled relatively cheaper than small packages of light weight,—that must be evident,—at any time or place.

Q. Well, do you call soap small packages of light weight?

A. I do.

348 Q. What do you call large packages of heavy weight?

A. We handle at East St. Louis large shipments of liquors, for instance, drygoods from the East, packages weighing anywhere from four to eight, ten, as much as fifteen hundred pounds. We handle considerable quantities of iron, some in large packages, many of which weigh from four to fifteen hundred pounds, manufactured iron of various classes; and those large packages can be handled relatively cheaper than smaller packages of light weight of soap.

Q. Do you know anything abour glucose?

A. Yes, sir, we handle some.

Q. Does that come in large packages of heavy weight?

A. Yes, those barrels weigh from 500 lbs. upwards.

Q. Now how is the cost of handling that compared with the cost of handling soap?

A. I should think that you could handle glucose for perhaps half what it would cost to handle a shipment of soap.

Q. You don't know anything about it? It is just a guess, isn't it?

A. No, it is not altogether a guess.

Q. Have you any facts that you can base it on?

A. I haven't figures that I can give you exactly on that point.

Q. Tell me how it costs more.

349 A. A trucker will load three of four boxes of soap on a truck and truck it to the wagon——

Q. That is 180 lbs.

A. That is 180 lbs. He can load a barrel of glucose weighing 500 lbs. on the same truck and take it to the same wagon in the same time. I think perhaps that will illustrate the matter.

Q. All right, sir. Now let us take something else. Let us take horseshoe nails; how does that compare?

A. Well, a trucker can take three kegs of horseshoe nails weighing approximately 100 lbs. apiece—well, those are in boxes, however. However, he can get twice the weight on a truck that he will get of soap, or horseshoe nails.

Q. Does he do it?

A. I am not sure that that is always done, but he can do it.

Q. Well, couldn't he get more than three boxes of soap on a truck?

A. He can get three or four.

Q. He can't get over four?

A. No, sir, I don't think so. I see them trucked on the platform almost every day and you seldom see over four; most frequently three.

Q. Well, you said as I understood you that there was nothing that you had that you could figure out what it would cost to

350 handle any particular commodity?

A. I said I didn't have figures on that.

Q. You said that there was no way that you could figure out what it would cost you.

A. I don't think I said there was no way. I said it would be too expensive.

Q. If there is any way that you can do it, tell me how.

A. There would be but one way and that would be to simply handle that commodity, determine the time it takes to handle it, and figure your cost.

Q. I am talking about traffic you have already handled, I am not talking about the future and what could be done. Is there any way that could be ascertained?

A. No, sir, no particular commodity.

Q. Haven't you undertaken to say here that it would cost twice as much to handle soap as it would glucose?

A. I said about twice as much. That was my opinion.

Q. Your opinion?

A. Yes, sir.

Q. We are talking about facts, you know, and hadn't you just

said before that there was no way you could figure out the difference between the cost of different commodities?

A. I said I couldn't figure the exact cost.

351 Redirect examination.

By Mr. COLSTON:

Q. When you say that it would cost 49.1 cents a ton to handle soap, do you mean to say anything more than that that is an average cost per ton of all L. C. L. freight, and that in your judgment soap is a fair average of the general cost per ton?

A. Yes, sir.

Mr. GLASGOW: Wait a moment. That is objected to as suggestive and leading, and the witness had been examined as to this in chief.

Q. You say yes, but that don't quite answer; did you mean to say anything more than that?

Mr. GLASGOW: That is objected to again as suggestive.

A. I mean to say simply that that was the average cost per ton for all commodities, and that in my judgment soap was a fair commodity—or rather that soap—the cost of handling soap was a fair cost based on all the commodities handled.

Q. A fair average?

A. Fair average, yes, sir.

Q. You said that you thought it would cost twice as much to handle soap as it would glucose. What is that answer based on?

352 A. The fact that I have seen a barrel of glucose weighing 500 lbs. trucked to a wagon, and right aside of it a shipment of soap weighing approximately 180 lbs., three boxes, which took the same time; the cost of handling those trucks was the same; and it even cost more than half to handle that shipment of soap than the glucose.

Q. You get paid for the glucose, too, I suppose, by the pound, as well as paid by the pound for soap?

A. Yes, sir.

Q. And the basis for making the statement that you have made as to the relative cost of handling glucose and handling soap or handling any commodities, is your observation and your experience, not on any calculation in figures?

A. No, sir.

Mr. GLASGOW: Objected to as not re-examination and the question is leading and suggestive.

Q. What sort of trucks do you use for handling these goods?

A. We use a Fairbanks two wheel platform truck.

Q. Don't use these long great big trucks like the express companies use?

A. No, sir.

Q. You have nothing to do with the making of rates? You are not a rate maker, or concerned in the making of rates?

A. No, sir.

353 Recross-examination.

By Mr. GLASGOW:

Q. It costs you more than twice as much to handle soap as glucose now, does it?
A. Well, I think perhaps it would.
Q. Well don't you know that it costs three times as much?
A. No, I am not sure that it will.
Q. Don't you know that it costs four times as much?
A. No, sir.
Q. It don't cost you anything to handle glucose, does it, compared with soap?
A. I explained the relative cost a while ago.

And further deponent saith not.
(Signature waived.)

354 FRANK J. RICHARDS, being first duly cautioned and sworn, deposes and says as follows:

Direct examination.

By Mr. MAXWELL:

Q. What is your occupation?
A. Bill clerk, C. H. & D.
Q. In the office of Mr. C. A. Barnard?
A. Yes, sir.
Q. He asked you to make some statement, I believe, with respect to L. C. L. shipments in June, 1904?
A. He did.
Q. Are you a bill clerk in his office?
A. Yes, sir.
Q. What is done with the waybill after it is made out?
A. Well, it is copied and mailed to the receiving agent or the agent to whom the bill is made, generally.
Q. Have you a book in which you keep the copies of the waybills?
A. Yes, sir.
Q. Let me see it, please.

(Witness produces waybill book dated June 2, 1904.)

Q. Did you make out the original waybills that are in this book?
355 A. A majority of them. (Inaudible.)
Mr. MAXWELL: The witness turning to the waybills for the 6th, 7th and 8th, says "I made them out."
The WITNESS: I beg pardon; I didn't make this here. There are some few in there that I didn't make out. They are not in my handwritting. However this is the book in which my billing is copied.
Q. Some of those bills you didn't make out?

A. Some of them I didn't make out. The majority of them I made out.

Q. And the ones that you didn't make out were made out by the other clerks in the office?

A. Yes, sir.

Q. And copied in the regular course of business in this impression book?

A. Yes, sir.

Q. This impression book is a copy of the waybills made out in your office on that day?

A. By me, yes, sir.

Q. That shows the weight of the article?

A. Yes, sir.

Q. And the class of the article?

A. Classification.

Q. And the consignee?

A. Yes, sir.

356 Q. Now you made out figures on four sheets that I show you to which your signature is appended?

A. Yes, sir.

Mr. MAXWELL: I will offer these sheets in evidence.

(The same is hereto attached marked "Exhibit 7" and made part hereof.)

Q. And are those sheets a correct statement of the various classes of L. C. L. freight shown by the waybills?

A. Yes, sir.

Q. Taken from this book?

A. From that book, yes, sir.

Cross-examination waived.

And further deponent saith not.

(Signature waived.)

357 Mr. Maxwell produces the clerks whose names are on "Exhibit 1" who made the other statements that are there recorded, and for the purpose of saving time

It is agreed that they would testify substantially as Mr. Richards has testified with respect to the correctness of the figures set opposite their names; and it is agreed that this statement may be received in lieu of the testimony of these witnesses.

(The petitioner however reserves an exception to the evidence of the facts disclosed by this statement on the ground that that is irrelevant and immaterial and incompentent.)

It is stipulated by counsel that the signatures of the witnesses to these depositions are waived.

EXHIBIT 1.

Joseph L. Lackner, Notary Public.

(See Testimony of C. A. Barnard, Page 156.)

C., H. & D. Ry.

Classification, L. C. L. Shipments, June 6, 7, 8, 1904.

Classes.

Names.	1st.	2nd.	3rd.	4th.	5th.	1¼ x 1st.	1⅓ x 1st.	2 x 1st.	2½ x 1st.	3 x 1st.	4 x 1st.	2nd−15%.	3rd−20%.	5th+10%.	Total.
O'Donnell	39,887	13,915	27,677	52,185	505	3,530	5,415	70	.....	.....	.....	63,047	1,350	760	208,341
Littell	20,174	16,095	9,777	21,797	2,695	5,680	1,000	35	.....	.....	.....	8,152	12,818	3,040	101,263
Flynn	64,693	14,505	98,610	92,042	23,624	1,600	13,695	1,830	.....	700	.....	18,510	52,746	23,583	406,138
Hackett	19,519	11,830	23,880	51,515	.....	21,147	461	2,285	.....	.....	.....	6,155	2,045	4,070	142,907
Meagher	79,782	52,405	95,288	159,359	7,715	10,360	5,465	4,770	.....	100	.....	57,494	15,745	8,969	497,452
Richards	81,855	17,035	81,327	36,035	12,980	33,135	3,270	10,895	.....	2,425	.....	61,994	26,768	8,475	376,194
Total	305,910	125,785	336,559	412,933	47,519	75,452	29,306	19,885	.....	3,225	.....	215,352	111,472	48,897	1,732,295
Per cent.	.1766	.0726	.1943	.2384	.0274	.0436	.0169	.0114	.....	.0018	.....	.1243	.0644	.0283	1.00

359 EXHIBIT 2. Joseph L. Lackner, Notary Public.

(See Testimony of C. A. Barnard, Page 160.)

Cincinnati, Hamilton & Dayton Railway Co.

Freight Office.

C. A. Barnard, Agent, Cincinnati, O.

The following figures show that by using 10,000 lbs. as the average loading capacity of a car of mdse., and by using Cin'ti to Chicago rates as a basis, such car, according to percentage of each class of freight found in detailed statement would have earned revenue as below.

Classes and %.			Earnings.
1st	.1766	.40	$7.06
2nd	.0726	.34	2.47
3rd	.1943	.25	4.86
4th	.2384	.17	4.05
5th	.0274	.15	.41
1¼ x 1	.0436	.50	.85
1½ x 1	.0169	.60	1.01
2 x 1	.0114	.80	.91
3 x 1	.0018	1.20	.22
2nd — 15%	.1243	.29	3.60
3rd — 20%	.0644	.20	1.29
5th + 10%	.0283	.16½	.47
	1.00		$27.20

360 EXHIBIT 3. J. L. Lackner, Notary Public.

(See Testimony of C. A. Barnard, Page 232.)

(In Pencil:) Marked C. A. B. No. 6.

(On C., H. & D. Freight Traffic Dept. Letter Head.)

Gross ton'ge.	Depot ton'ge.	Clerks.	
174707	18139	359965	Jan'y 1904
196001	19081	369660	Feb'y "
231263	24355	368720	March "
211798	22494	364535	April "
181527	21346	357720	May "
227308	21430	341335	June "
215668	18806	344010	July "
			Aug. "
246541	20868	340350	Sept. "
274689	21610	341715	Oct. "
278935	20743	245600	Nov. "
266114	20375	346515	Dec. "
2504551	229247	3870125	
229247			
2275304			
	229247		

361 EXHIBIT 4. Joseph L. Lackner, Notary Public.

(See testimony of A. L. Robinett, P. 266.)

(In pencil) Ex. A. L. Robinette, No. 4.

Statement of Various Classes of L. C. L. Tonnage Loaded at P., C., C. & St. L. Ry. Co. Freight Depot for Three Days in June, 1904.

	June 9.	June 10.	June 13.	Total.	Per cent.
3 Times 1st Class	.....	.....	650	650	.03 %
2½ " "	870	1000	.....	1870	.09 %
2 " "	6423	6255	3410	16088	.78 %
1½ " "	11247	11649	12611	35507	1.73 %
1¼ " "	6420	4530	6560	17510	.85 %
1st Class	130500	163172	150116	443788	21.60 %
2nd "	22098	84392	40947	147937	7.20 %
Rule 25—15 % Less 2nd Class.	68507	120523	140729	329759	16.05 %
3rd Class	130188	182645	112588	425421	20.70 %
Rule 26—20 % Less 3rd Class.	41572	36065	41193	118830	5.78 %
4th Class	58229	70014	151643	279886	13.66 %
5th Class Plus 10 %	71310	46375	9270	126955	6.17 %
5th Class	16371	22833	71022	110226	5.36 %
Total	563735	749953	740739	2054427	100. %

362 EXHIBIT 5. Joseph L. Lackner, Notary Public.

(See Testimony of T. A. Connor, Page 300.)

The following figures show that by using 12,000 lbs. as the average loading capacity of a car of mdse., and by using Cincinnati to Chicago rates as a basis, such car, according to percentage of each class of freight found in detailed statement, would have earned revenue as below.

Classes and %.				Earnings
1st	21.10	.40	48.00	$10.12
2nd	6.33	.34	40.80	2.58
R. 25	17.43	.29	34.80	6.08
3rd	17.10	.25	30.00	5.13
R. 26	8.68	.20	24.00	2.08
4th	18.42	.17	20.40	3.75
5th	5.65	.15	18.00	1.02
1½ x 1	2.13	.50	60.00	1.28
1½ x 1	1.73	.60	72.00	1.25
2 x 1	.60	.80	96.00	.58
3 x 1	.41	1.20	144.00	.59
5th + — 10 %	.42	.....	19.80	.83
	100.00			$35.29

363 EXHIBIT 6. Joseph L. Lackner, Notary Public.

(See Testimony of C. E. Fish, Page 325.)

Recap.

June 14, 1904.

Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 1½.	Class 1½.
Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.
142805	54288	118517	142349	14534	39800	9165

June 15, 1904.

Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 1½.	Class 1½.
Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.
122583	50749	151314	95307	20550	24250	12435

June 16, 1904.

Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 1½.	Class 1½.
Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.
152797	74513	98338	74671	5261	40965	6170
418185	179550	368169	312327	40345	105015	27770
%	%	%	%	%	%	%
19.565	8.400	17.224	14.612	1.887	4.913	1.299

June 14, 1904.

Class 2 x 1.	Class 2½ x 1.	Class 3 x 1.	Class 4 x 1.	Class 15% less 2.	Class 20% less 3.	Class 10% over 5
Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.	Pounds.
8300	none.	855	155	90868	67859	51174

June 15, 1904.

17750	none.	275	25	73631	103516	56587

June 16, 1904.

14875	none.	1425	500	77701	68785	51802
40925	.....	2555	680	242,200	240160	159563
%	%	%	%	%	%	%
1.914	....	0.120	0.086	11.331	11.231	7.418

—— ——, *Agent.*

I certify the above to be correct.
(Signed) C. WEISKOPF, *B. C.*

(EXHIBIT 7.)

Joseph L. Lackner, Notary Public.

(See Testimony of Frank J. Richards, Page 356.)

Recapitulation.

	1.	2.	3.	4.	5.	1¼.	1½.	2 x 1.	2½ x 1.	3 x 1.	4 x 1.	15 % less 2.	20 % less 3.	10 % over 5.	Days total.
June 6	22805	6837	34175	16940	1300	4280	1260	2675	.....	2350	.....	21245	10478	1310	125654
June 7	27405	7875	21597	11615	2980	14645	1210	5730	.....	75	.....	16544	5890	1350	116916
June 8	31645	2330	25555	7480	8700	14210	800	2490	.....	.....	.....	24295	10400	5815	133630
Total	81855	17035	81327	36035	12980	33135	3270	10895	.....	2425	.....	61994	26768	8475	376200

Ind. & West.

F. J. RICHARDS.

1.	2.	3.	4.	5.	1¼.	1½.	2 x 1.	2½ x 1.	3 x 1.	4 x 1.	15% 2.	20% 3.	10% 5.
640	130	370	2100	1200	460	500	535	.....	1200	.....	780	1200	400
620	200	450	5300	100	450	250	540	.....	1150	.....	1900	4600	660
100	320	250	100	.....	610	250	1500	.....	.....	.....	600	330	1250
300	150	570	5640	.....	450	2 0	100	.....	.....	.....	5700	2973	
1550	260	3800	3800	.....	450	60	.....	.....	.....	.....	820	400	
180	1342	100	.....	.....	1860	.....	.....	.....	.....	.....	100	975	
300	150	2746	.....	.....	.....	.....	.....	.....	.....	.....	740		
775	1150	850	.....	.....	.....	.....	.....	.....	.....	.....	450		
100	2585	1300	.....	.....	.....	.....	.....	.....	.....	.....	420		
80	150	425	.....	.....	.....	.....	.....	.....	.....	.....	200		
660	400	780	.....	.....	.....	.....	.....	.....	.....	.....	450		
1140	.....	2564	.....	.....	.....	.....	.....	.....	.....	.....	450		
2560	.....	600	.....	.....	.....	.....	.....	.....	.....	.....	2435		
170	.....	300	.....	.....	.....	.....	.....	.....	.....	.....	250		
140	.....	1830	.....	.....	.....	.....	.....	.....	.....	.....	670		
300	.....	5850	.....	.....	.....	.....	.....	.....	.....	.....	5040		
550	.....	3000	.....	.....	.....	.....	.....	.....	.....	.....	200		
100	.....	500											
280	.....	4785											
7865	.....	2700											
240	.....	255											
1380	.....	150											
1440													
790													
275													
270													
22805	6837	34175	16940	1300	4280	1260	2675	.....	2350	.....	21245	10478	1310

June 6th.

F. J. RICHARDS.

1.	2.	3.	4.	5.	1¼.	1½.	2 x 1.	2½ x 1.	3 x 1.	4 x 1.	15% 2.	20% 3.	10% 5.
530	570	1750	610	2000	980	210	100	.....	75	.....	480	300	925
2900	275	510	350	980	640	100	550	.....	.....	.....	400	100	425
880	350	500	100	.....	460	900	440	.....	.....	.....	360	475	
250	70	900	175	.....	460	.....	100	.....	.....	.....	200	5015	
100	350	600	450	.....	460	.....	1050	.....	.....	.....	310		
250	800	120	4000	.....	460	.....	540	.....	.....	.....	3045		
135	800	1770	4200	.....	300	.....	850	.....	.....	.....	2100		
600	900	100	300	.....	460	.....	500	.....	.....	.....	943		
250	1650	1120	900	.....	880	.....	520	.....	.....	.....	526		
75	600	500	430	.....	510	.....	150	.....	.....	.....	250		
600	1010	950	100	.....	480	.....	930	.....	.....	.....	1230		
1575	500	100	.....	.....	440	.....	.....	.....	.....	.....	1060		
1700	.....	600	.....	.....	3235	.....	.....	.....	.....	.....	320		
285	.....	2425	.....	.....	1800	.....	.....	.....	.....	.....	1260		
465	.....	240	.....	.....	730	.....	.....	.....	.....	.....	1070		
560	.....	1085	.....	.....	1400	.....	.....	.....	.....	.....	1330		
260	.....	100	.....	.....	950	.....	.....	.....	.....	.....	810		
3080	.....	450	.....	.....	.....	.....	.....	.....	.....	.....	850		
3295	.....	3627											
660	.....	2550											
100	.....	1200											
335	.....	400											
260													
200													
800													
1055													
2050													
255													
360													
820													
2720													
27405	7875	21597	11615	2980	14645	1210	5730	.....	75	.....	16544	5890	1350

June 7th.

1.	2.	3.	4.	5.	1¼.	1½.	2 x 1.	2½ x 1.	3 x 1.	4 x 1.	15% x 2.	20% x 3.	10% x 5.
2900	100	140	120	2000	930	100	500				5330	860	4050
1000	200	160	1900	5050	460	700	1450				450	960	800
300	450	700	1050	800	910		540				380	2300	200
225	200	1080	470	850	900						2150	700	275
355	120	2040	200		400						700	570	140
850	200	750	2240		3650						1480	3100	250
1070	1060	300	500		560						200	240	100
2350		300	1000		420						1500	150	
5635		2840			3100						600	220	
530		200			2430						250	1300	
245		1300			450						710		
200		400									510		
400		756									800		
1080		1000									3000		
740		230									630		
300		200									2555		
1229		200									200		
1430		1700									2560		
350		220									200		
250		500											
160		1250											
210		1500											
550		940											
530		250											
120		3080											
680		400											
1110		1500											
1160		100											
1710		200											
2170		1500											
1060		400											
200		425											
360													
200													
31645	2330	25555	7480	8700	14210	800	2490				24205	10400	5815

June 8th.

368 STATE OF OHIO, *Hamilton County, ss:*

I, Joseph L. Lackner, a notary public in and for said county and State, duly commissioned and qualified, do hereby certify that the above named C. A. Barnard, R. R. Harris, A. L. Robinett, W. H. Sparks, T. A. Connor, Charles E. Fish, J. D. Fidler and Frank J. Richards, were by me severally sworn to testify the truth, the whole truth and nothing but the truth before giving their foregoing depositions; that said depositions were, by consent of counsel, taken down in Shorthand by Laura V. Jones, a disinterested person, in my presence and in the presence of the witnesses respectively, and were afterwards reduced to typewriting by her; that the signatures of the witnesses thereto were waived by consent of counsel; that said depositions were duly taken pursuant to and at the time and place and within the hours specified in the notice hereto attached, and were continued as hereinbefore set forth; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this case, and was at the time said depositions were taken a notary public in and for said county and state.

I further certify that the charge for said depositions $73.75, is just and reasonable and has been paid to me by the defendants.

[SEAL.] JOSEPH L. LACKNER,
Notary Public, Hamilton County, Ohio.

My commission expires Jan. 10, 1906.

369 And afterwards, to wit: but on the same day as last aforesaid, came the Complainant by its Solicitor and filed in the Clerk's Office of the Court aforesaid, a Statement, which said Statement is clothed in the words and figures, following, to wit:

Statement Taken from Annual Reports Filed with Interstate Commerce Commission.

From Annual Reports of Companies Named for the Years Ending June 30, 1891, 1895, 1900, and 1904.

Name of road and year.	Total freight tonnage.
Cincinnati, Hamilton and Dayton Ry. Co.:	
1891[1]	2,786,592
1895[1]	3,959,038
1900	5,076,319
1904	6,107,628
Pittsburgh, Cincinnati, Chicago and St. Louis Ry. Co.:	
1891[2]	10,231,022
1895	14,308,189
1900	22,844,241
1904	29,616,716

[1] From annual report of the Cincinnati, Hamilton and Dayton R. R. Co.
[2] Report for nine months ending June 30, 1891.

Name of road and year.	Total freight tonnage.
Pennsylvania R. R. Co.:	
1891	50,013,674
1895	55,625,107
1900	79,973,667
1904	98,098,025
Cleveland, Cincinnati, Chicago and St. Louis Ry. Co.:	
1891	7,801,377
1895	8,625,073
1900	11,006,304
1904	12,510,586
370 Lake Shore and Michigan Southern Ry. Co.:	
1891	11,259,811
1895	13,214,833
1900	19,130,750
1904	25,920,421
New York Central and Hudson River R. R. Co.:	
1891	16,621,567
1895	19,741,495
1900	37,586,496
1904	36,379,655
Baltimore and Ohio Southwestern R. R. Co.:	
1891	1,730,357
1895[3]	3,678,036
1900	5,366,048
1901[4]	
Baltimore and Ohio R. R. Co.:	
1891	15,097,632
1895	16,080,423
1900	28,366,696
1904	43,347,193

OFFICE OF THE INTERSTATE COMMERCE COMMISSION.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, hereby certify that the above is a correct statement of the matter therein contained taken from the annual reports filed with the Interstate Commerce Commission by the carriers named therein.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission at the city of Washington, in the District of Columbia, this 6th day of May, 1905.

EDW. A. MOSELEY,

[SEAL.] *Secretary of the Interstate Commerce Commission.*

[3] From annual report of the Baltimore and Ohio Southwestern Ry. Co.
[4] Included in report of the Baltimore and Ohio R. R. Co.

371 And afterwards, to-wit:—on the 10th day of May, A. D. 1905, came the Complainant by its Solicitor and filed in the Clerk's Office of the Court aforesaid, a Statement, which said Statement is clothed in the words and figures, following, to-wit:—

Statement Taken From Annual Reports Filed with Interstate Commerce Commission.

From Annual Reports of Companies Named for the Years Ending June 30, 1891, 1895, 1900 and 1904.

Name of road and year.	Gross earnings from operation.	Total operating expenses.	Net earnings.
Cincinnati, Hamilton and Dayton Ry. Co.:			
1891[1]	$4,013,156	$2,460,848	$1,552,308
1895[1]	4,239,175	2,608,760	1,630,414
1900	4,823,603	3,153,270	1,670,333
1904	6,037,145	4,254,862	1,782,282
Pittsburg, Cincinnati, Chicago and St. Louis Ry. Co.:			
1891[2]	12,649,934	9,212,312	3,437,622
1895	17,232,533	11,990,941	5,241,592
1900	22,696,307	15,598,724	7,097,583
1904	28,616,250	21,306,991	7,309,260
Pennsylvania R. R. Co.:			
1891	65,239,723	43,467,851	21,771,872
1895	61,739,918	42,036,147	19,703,771
1900	80,304,332	53,916,172	26,388,160
1904	118,884,505	83,406,170	35,478,335
Cleveland, Cincinnati, Chicago and St. Louis Ry. Co.:			
1891	13,134,439	9,094,911	4,039,528
1895	13,625,028	9,917,341	3,707,686
1900	16,806,851	11,332,931	5,473,920
1904	21,069,954	16,033,602	5,036,352
372 Lake Shore and Michigan Southern Ry. Co.:			
1891	20,491,957	13,375,029	7,116,929
1895	19,825,536	12,724,228	7,101,308
1900	25,332,196	15,601,125	9,731,071
1904	34,885,447	26,906,351	7,979,096
New York Central and Hudson River R. R. Co.:			
1891	37,342,538	23,664,680	13,677,858
1895	41,824,350	27,255,708	14,568,642
1900	54,578,277	34,053,155	20,525,122
1904	77,749,066	55,819,641	21,929,425
Baltimore and Ohio Southwestern R. R. Co.:			
1891	2,326,671	1,516,861	809,810
1895[3]	6,323,036	4,017,104	2,305,932
1900	7,223,879	5.113,346	2,110,532
1904[4]			
Baltimore and Ohio R. R. Co.:			
1891	24,069,208	16,886,834	7,182,374
1895	22,817,182	15,994,304	6,822,878
1900	34,890,227	22,736,941	12,153,286
1904	65,161,866	43,719,649	21,442,217

[1] From annual report of the Cincinnati, Hamilton and Dayton R. R. Co.
[3] From annual report of the Baltimore and Ohio Southwestern Ry. Co.
[4] Included in report of the Baltimore and Ohio R. R. Co.
[2] From report for nine months ending June 30, 1891.

373 OFFICE OF THE INTERSTATE COMMERCE COMMISSION.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, hereby certify that the above is a correct statement of the matter therein contained taken from the annual reports filed with the Interstate Commerce Commission by the carriers named therein.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission at the City of Washington, in the District of Columbia, this 6th day of May, 1905.

[SEAL.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

374 And afterwards to-wit on the 12th day of June A. D. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, Depositions of John E. Loomis, and others on their behalf in said cause, which Depositions are clothed in the words and figures following to-wit:

UNITED STATES OF AMERICA, *Southern District of Ohio, ss:*

In the Circuit Court of the United States for the Southern District of Ohio.

#5897.

INTERSTATE COMMERCE COMMISSION
vs.
CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

The depositions of John E. Loomis, N. W. Pierce and C. T. Scaife, taken on behalf of the defendants, before M. J. Hogan, a Notary Public of Cook County, Illinois, May 11th, A. D. 1905, at the office of George Willard, No. 2 Sherman street, Chicago, Illinois, pursuant to agreement.

Mr. L. A. Shaver, appearing for plaintiff;
Mr. Lawrence Maxwell, Jr., appearing for defendants.

375 JOHN E. LOOMIS, having been first duly sworn, was examined in chief by Mr. Maxwell, and testified as follows:

Q. What is your name?
A. John E. Loomis.
Q. What is your age, residence and occupation?
A. 54 years of age; 651½ Washington Boulevard, residence; freight agent of the P. C. C. & St. Louis Railway, Chicago.
Q. How long have you been freight agent of that company in Chicago?
A. 16 years.
Q. What service if any, prior to that time, did you have in the railway business?

A. I was foreman of the freight house, the freight houses, for eight years previous to being appointed agent.

Q. And prior to that time?

A. In different capacities, clerical positions.

Q. Always in Chicago?

A. Yes, sir.

Q. What was your duty as foreman of the freight house?

A. I had charge of the laborers and charge of the unloading and the delivery of freight.

Q. What are your duties as freight agent of the company?

A. I have general charge of the station, pertaining to local freight matters, all in-bound and outbound freight is under my jurisdiction.

Q. Then as foreman of the freight house and as freight agent of the company, are you familiar with the methods of handling
376 freight at the station in Chicago?

A. Yes, sir.

Q. Is it all under your direction?

A. At present, yes sir.

Q. And while you were foreman it was, I suppose, under your direction subject——

A. To the agent, yes.

Q. To the freight agent? What sort of facilities for handling freight at the depot has your company in Chicago?

A. We have the most excellent—we have very superior facilities in Chicago for handling freight, we have ample room both freight *landuse* and car trackage room, which enables us to handle freight at a minimum cost.

Q. What was your company—what service does your company perform at Chicago in connection with the handling of L. C. L. freight, how is L. C. L. freight handled at Chicago?

A. On our out freight, the freight is delivered to us largely by teams, all of the Chicago shippers deliver the freight by teams. Our men take the freight off from the wagon and run it from the wagon to the car, and in some cases place it upon the freight house floor and again take it from the floor and place it into the car. We receive some L. C. L. freight from connections by car; the freight is taken out of the Western lines cars and run down through the houses into their respective cars where the freight is destined for. On our in freight the cars come into Chicago, the L. C. L. freight is run into our in freight houses, unloaded into the freight houses, the consignees are notified, the teams come for the freight and we
377 take the freight from the freight house floor and place it upon the wagon of the team. Our transfer freight in Chicago, which amounts to I should say sixty-five per cent. of the whole, we place the freight upon the transfer wagon, enter the bills into what we call a transfer book, the team delivers the freight and gets a receipt from it; we take these receipts and check them back to see that we have got the receipts for the property. That is an additional cost to the through rate, that is the teaming part of it, the amount that we would pay out for teaming is plus the rate on the freight to wherever it is destined.

Q. In such cases do you absorb that teaming charge?

A. Yes, sir.

Q. Well now, as a matter of physical handling, of any point or at the point—of freight that is received for transportation and freight that arrives at Chicago for delivery as you have described, tell what class of men are employed in performing that service of physical handling?

A. Are you getting at the cost for handling this platform freight? What I want to know is, do you want the foreman, delivery man, tallying men and physical clerks—the physical handling is the laborer, the truck man, the storer and the caller, that is the physical handling.

Q. And then I suppose there is a foreman who superintends?

A. Oh yes.

378 Q. And under the foreman——

A. Is the tally men, receiving clerks and prepaid clerks.

Q. All these servants are on the platform attending to the loading and unloading of freight?

A. The actual handling of the freight.

Q. Yes, the actual handling of the freight. Now what other servants are incident to the depot handling of L. C. L. freight other than the physical handling that you have,—the cost of the physical handling that you have just described by way of clerical service if any?

A. We have a very large force of clerks who make the bills, attend to the tracing, attend to claims and the various statements which are necessary in the handling of the freight station.

Q. Well give us somewhat in detail what clerical work is involved in the L. C. L. shipment as compared with the C. L. shipment. Tell us first what clerical work is involved in the C. L. shipment?

A. A carload shipment coming into Chicago is on a way-bill but one consignment. A clerk makes the expense bill from that waybill. Then it is,—the waybill is taken and entered up into three different books and filed away. That expense bill goes to our notice clerk, who makes a notice from it which is sent to the consignee. The bill goes to the cashier and is there until the freight is paid,

379 delivery of the freight to the consignee.

Q. Is there only one expense bill to every car of C. L. freight?

A. Yes sir.

Q. One. Now tell us how many there are in a car of L. C. L. freight and in what respect the clerical service differs, if at all?

A. The billing on an L. C. L. car will consist of from 25 to 30 different items. There is as much work, or very nearly as much work, on a small consignment, of an L. C. L. consignment, one shipment, as on an entire carload. And an L. C. L. shipment as I said before would average from 25 to 35 different consignments, different consignees and different destinations, and in each consignment there will be an average of five different articles, different classes of freight.

Q. Well do I understand then that there are from 25 to 30 times

as many expense bills that have to be made out for a carload of L. C. L. as for a carload of C. L.?

A. Yes sir, expense bills, but the work is very much more, because as I say there will be five or six items on each expense bill where a carload would be only a car of lumber or one car of coal, and an L. C. L. shipment,—one box of pepper, one barrel of sugar, one box of soap, one box of perfumery, and so on.

Q. Can you tell us what proportion of the clerical force at your depot is at work on L. C. L. business?

380 A. At least 85 per cent.

Q. We are engaged in this case ascertaining the difference between the cost of shipping C. L. and L. C. L. soap. I wish to direct your attention only to the extra cost incidental to depot and transfer handling of L. C. L. freight as compared with C. L. Will you please tell us what that cost is per ton in Chicago to your company, the cost of handling L. C. L. freight at your depot?

A. Practically 60—70 cents,—no, 64 cents, that is taking in the clerical force that handle, devote their attention, to L. C. L. freight, 64 cents.

Q. Is it a common practice among the railroads in Chicago to take L. C. L. freight off of the wagons of shippers and to put it on the wagons of the consignees?

A. With all railroads in Chicago, yes.

Mr. SHAVER: What did you say it cost, 70 cents?

A. 64 cents.

Mr. MAXWELL:

Q. Is that per ton of 2,000 pounds?

A. Yes sir.

Q. How do you pay your laborers in the freight house?

A. On a tonnage basis.

Q. I suppose this cost of—no, strike that out. State whether or not this cost of 64 cents per ton includes anything on account of the investment of the freight house and the interest on that in-

381 vestment, and the cost of insurance and general expense?

A. Not anything at all.

Q. State whether it includes anything except the actual cost of the physical handling and the clerical servants,—service incidental to that handling?

A. That is all.

Q. Has that cost been increasing or diminishing in Chicago during the past four or five years?

A. Increasing.

Q. Why is that?

A. On account of the advance in the pay of laborers and the clerical force.

Q. Have the wages of the laborers and clerks such as you use in handling L. C. L. freight in Chicago increased since 1899?

A. Yes, sir, yes.

Q. About how much?

A. 20 per cent. anyway, as a minimum, about 20 per cent.

Q. Is there a cost of transferring L. C. L. freight in addition to the cost of loading it at the point of shipment and unloading it at the point of destination on your road. Take for instance L. C. L. freight received by you at Chicago for delivery at—in some point in the northeastern part of Ohio or the Northwestern part of Pennsylvania or in New England: Is it necessary, in addition to loading it in Chicago and unloading it at the point of destination, to transfer it at one or more intermediate points?

A. When freight is destined to interior eastern points it is
382 *it is* loaded in Chicago for Columbus transfer. The Columbus transfer reloads it to Pittsburgh transfer, and from that point they distribute it; it may have been unloaded once or twice before it reaches its destination. It depends upon what the destination is.

Q. If it is transferred at Columbus and again transferred at Pittsburgh, that L. C. L. freight has to bear the cost of loading at Chicago, transfer at Columbus, transfer at Pittsburgh and the unloading at the point of destination?

A. Yes sir.

Mr. MAXWELL: That is all.

Cross-examination.

By Mr. SHAVER:

Q. What did you say your name was?

A. John E. Loomis.

Q. Your testimony relates exclusively to the expense of handling freight in Chicago by the P. C. C. & St. Louis road?

A. Yes sir.

Q. I believe you stated that you have great facilities for handling traffic here in Chicago, your road?

A. Yes sir.

Q. Are those facilities greater now than they have been in the past?

A. Yes sir.

Q. Were they greater in 1900 than they had been previous to that time?

A. Yes sir.

383 —. Don't those greater facilities for the handling of freight (Reduce) reside the expense to some extent?

A. Very much, yes sir.

Q. That is the tendency is now to modern improvements and facilities for handling traffic?

A. Yes, sir.

Q. You say that on less than carload traffic a car would contain from 25 to 30 items, different classes of freight, and expense bill—clerical labor has to be performed as to each. In making that statement you referred to a full carload of less than carload traffic did you not?

A. No, sir——

Q. You meant that if the car was filled,—a car filled half with one class of traffic and the other half with another class would be a less than carload shipment?

(Question read.)

A. Yes, sir.

Q. In stating that a car of less than carload traffic would contain from 25 to 30 items, you are simply making an estimate are you not?

A. Approximately, yes.

Q. A guess—you have never made a count have you.

A. I have looked over them for to get that information many times in my experience as freight agent.

Q. Is not common soap shipped in boxes, whether shipped in car-loads or less than car-loads?

A. I don't get your meaning.

Q. Well, isn't common soap shipped in boxes.

384 A. In boxes, yes.

Q. Isn't that the case whether it is a car-load of it or less than a car-load of it.

A. In boxes as a rule.

Q. If not shipped in boxes how would it be shipped.

A. Well, it may be shipped in barrels, very seldom, it might be, might have some other packages besides boxes.

Q. It might be shipped in barrels, whether car-loads or less than car-loads, might it not.

A. Exactly?

Q. There is no difference as to the package, whether it is a car-load or less than car-load shipment is there?

A. If you will give me that a little plainer I will try and answer you, I don't catch your meaning.

Mr. MAXWELL: He means the way it is packed.

Mr. SHAVER: Yes, the way it is packed.

A. If it would be packed,—if it would be packed in the car in about the same manner, whether L. C. L. or C. L.

Q. Isn't car-load product as a rule more easily handled than traffic shipped in other ways, I mean isn't traffic shipped in boxes more convenient for handling than traffic shipped in other ways?

A. Not necessarily, no, sir.

Q. You stated that the cost was 64 cents per ton of 2,000 pounds, handling less than car-load shipments, I think at the depot?

A. Yes, sir.

385 Q. Is that on freight in general, or was that limited to soap?

A. That is the entire cost for our freight handled L. C. L.

Q. Freight in general?

A. Mr. MAXWELL: Average cost?

A. Average cost, yes, sir.

Mr. SHAVER:

Q. Is that an estimate of yours, or a statement based on figures, calculations?

A. Based on figures.

Q. Have you the figures here.

A. I have some of the items here, yes, sir.

Q. You say that the cost of handling traffic has increased 20% since 1899, I believe you said.

A. Yes, sir, that is the cost for labor.

Q. Yes, the cost of labor.

A. The material,——

Q. Clerk hire and etc.

A. Has increased about the same amount I should judge but I don't know exactly how much.

Q. That increase of course applies to car-loads as well as less than car-loads?

A. Yes, sir.

Q. That 20% is a mere estimate of yours, isn't it?

A. No, sir it is an actual fact.

Q. Was common soap in less than car-loads advanced from class four to class three, less 20%, because there had been an increase in the expense of handling soap in less than car——

386 A. I do not know about that.

Q. Is it possible or practicable to ascertain accurately the cost of handling and transporting any single article of traffic, either in car-loads or less than car-loads.

A. It can be arrived at very closely, I should judge, that is from the time the package leaves its originating point until reaching the destination.

Q. You say you should judge that would be so?

A. I should judge so.

Q. You have no experience on that?

A. I have never figured it, no, sir.

Q. Have you made any estimate as to the cost of handling soap in car-loads, or less than car-loads, or are your estimates in relation to traffic in general.

A. To traffic in general.

Redirect examination.

By Mr. MAXWELL:

Q. Mr. Shaver, has asked you whether you have made an estimate of the cost of the depot handling of soap? I suppose—and you have answered, your statement is that 64 cents per ton is the average of the cost of depot handling of all L. C. L. merchandise. I suppose there are some articles that would be handled more easily,

387 cheaply, and conveniently, than others. Will you please state whether soap represents a fair average of convenience and cost of handling, or whether soap is more expensive to handle than the general average of articles, or less expense?

A. I should not say it was any more expensive to handle soap than other commodities, would run about the same I would judge, taking an average of all freight handled through the freight house.

Q. You think soap is a fair average of all L. C. L. freight, considered as a whole.

A. Yes, sir.

Q. That is all.

Mr. MAXWELL: Mr. Pierce can you give us your figures now? Mr. Shaver is obliged to go out. Have you got your papers ready?

Mr. PIERCE: If you want to include the clerical in with the rest I haven't got them ready.

Mr. MAXWELL: When can you have them?

Mr. PIERCE: How soon must you have them?

Mr. MAXWELL: You probably could not have your figures before 2 o'clock I suppose. Could you have them then?

Mr. PIERCE: I think so, I will try to.

Whereupon an adjournment was taken until 2 o'clock P. M.

388 M. W. PIERCE, called as a witness, having been duly sworn, was examined in chief by Mr. Maxwell, and testified as follows:

Q. What is your name?

A. M. W. Pierce.

Q. What is your age? Residence, and occupation?

A. 57 years old; occupation Local Freight Agent Chicago, Milwaukee, and St. Paul Railway Company?

A. At Chicago?

A. Yes, sir.

Q. How long have you held that position?

A. Eight years the first of April.

Q. What Railroad service did you have prior to that time.

A. I was local freight agent for the Company at Madison, Wisconsin, Local Freight Agent at Perry, Iowa, and I was ticket agent for the Company for about eighteen years at Watertown Junction at Wisconsin.

Q. What are your duties as local freight agent at Chicago with respect to — general supervision of all their freight house and team tracks and their local freight business.

—. ——.

Q. How is L. C. L. Freight handled at Chicago, what service does the Company perform in connection with the reception and delivery of it?

A. The receiving of it from the teams, the trucking of it to the houses to the cars.

Q. And delivery of it to teams?

A. Delivery of it from the cars to the houses, and from the

389 houses to the team, on the in freight.

Q. Where are your freight houses—where is your freight house located at Chicago?

A. Our out freight houses are located between Union and Jefferson Streets on Wayman? Our in freight houses are on—between Union and Green Streets on Wayman.

Q. What is the character of your facilities?

A. They are good.

Q. What is the cost of the depot handling of L. C. L. Freight in your depots at Chicago?

A. Between 61 and 62 cents.

Q. Has that cost increased or diminished since 1899.

A. It has increased.
Q. How much.
A. About 20%.
Q. On what account?
A. Increase in wages.
Q. Do you pay by the hour or by the ton?
A. We pay our receiving clerks by the month and the balance of them by the hour. Our office force is all paid by the month.
Q. What would you say about soap as compared with the general run of L. C. L. freight, is it more or less costly to handle at the depots than the average?
A. I should figure it is about an average.
Q. That is all.

390 Cross-examination.

Mr. SHAVER:

Q. What is your road?
A. The Chicago, Milwaukee & St. Paul?
Q. You say less than carload traffic is delivered from teams, isn't car-load traffic also delivered from teams?
A. Car-load traffic?
Q. Yes, sir.
A. Oh, yes.
Q. I understood you to say the cost of less than car-load traffic was between 61 and 62 cents, is that per ton?
A. That is per ton, yes.
Q. That is the cost of what?
A. Of all the freight house and force in connection with the same as well as the office.
Q. That is the cost of traffic in general?
A. What is it?
Q. Cost of traffic in general?
A. Less than car-load.
Q. Yes, not on any particular kind of traffic.
A. No, sir.
Q. How did you arrive at that 61 to 62 cents?
A. By a statement that I keep from month to month and made up in a yearly statement.
Q. Do you know what the cost is on the soap?
A. I do not, I never figured the cost of the soap alone.

Q. Did you say that the cost of handling less than car-
391 load soap has increased about twenty per cent. since 1899?
A. I said on everything, that would include soap?

Q. On everything. And have the facilities for handling traffic improved since 1899.
A. The facilities have been improved but have been improved on account of the increase of business.
Q. I didn't ask you what reason, I asked you if they had been improved.
A. They have been improved.

Q. Doesn't the improvement in facilities for handling traffic cause the handling to cost less somewhat.

A. No, sir.

Q. Well, the better facilities you have, don't that lead to hiring a small amount of labor?

A. The business is increased so much that the facilities the improvement in the facilities has not decreased the loss the cost in handling facility, in handling the freight?

Q. Haven't the quality of the facilities improved so that you can handle the same quantity of freight easier, with greater facility?

A. No, sir.

Q. Are there any car-load shipments of soap from Chicago?

A. There is some, but then, we do not—we are not so situated that we get that business.

Q. Does the difference between class five rate, and class
392 three less twenty per cent. represent the difference in cost between handling car-load and less than car-load freight?

A. Read the question please.

(Question read.)

Q. Soap I should say?

A. I do not know. I never figured that out and never had occasion to, I could not answer that.

Redirect examination.

By Mr. MAXWELL:

Q. I have another question. Is that increase since 1899 of 20% in the cost of handling L. C. L. Freight an increase notwithstanding the advantages that would come from an increase of facilities?

A. I don't just understand that either.

Q. You said the cost of depot handling of L. C. L. freight has increased twenty per cent. since 1899.

A. Yes, sir.

Q. Is that the increase in the cost notwithstanding the increase in the facilities in handling freight.

A. Yes, sir.

Q. How about the character of the labor that you get now as compared with what you got prior to 1900.

A. It is not as good by—I should say thirty per cent. anyway.

393 Recross-examination.

By Mr. SHAVER:

Q. How do you arrive at 20% as the increase in the cost in handling less than carload traffic?

A. Why the increase in wages paid to the man.

Q. That is a mere estimate, twenty per cent.?

A. No, sir, that is just what we have increased the wages of our men.

Q. That applies to all traffic, carload as well as less than carload?

A. Yes, sir.

Q. Soap is shipped in boxes?

A. Yes, sir, as a general proposition.

Q. Is not traffic shipped in boxes, more easy to handle than traffic shipped otherwise as a rule.

A. No, I don't think so.

Q. Isn't traffic in boxes a desirable traffic for handling?

A. Yes, sir, I think it is desirable.

Q. Are you familiar with the making of classifications.

A. No, sir.

Q. You were never engaged, never on a committee engaged in that.

A. No, sir.

Mr. SHAVER: That is all.

Mr. MAXWELL: That is all.

394 C. T. SCAIFE, called as a witness, having been duly sworn, was examined in Chief by Mr. Maxwell and testified as follows:

Q. What is your name?

A. C. T. Scaife.

Q. What is your age, residence and occupation.

A. Fifty years old; freight agent of the Illinois Central Road; live at the hotel Del Prado, Chicago.

Q. Your road receives freight of the Big Four at Chicago.

A. We handle it from Kankakee into Chicago, and handle it here.

Q. How long have you been Freight Agent at Chicago.

A. Since about the 15th of May, 1903.

Q. And what connection did you have with the railroad service prior to that time.

A. I began thirty-four years ago with the Illinois Central.

Q. In what capacity.

A. I started in Memphis as a file boy and worked up to freight agent and commercial agent. I then went to New Orleans, I worked for them eleven years, superintendent of terminals, freight agent and division superintendent, coming here as stated above; since that time I have worked as freight agent.

Q. Do you have charge of the freight house.

A. I have charge of the handling of all the freight in and out of Chicago.

395 Q. Tell us in a general way what service your company performs in the receiving and handling and unloading and delivery of L. C. L. freight.

A. Out bound business, we take it from the teams and truck it into—that is take it from the wagon and truck it into the cars, weigh it, and so forth, and in cases where we are not ready to put it into the cars from the wagon, why we put it on the floor and afterwards take it into the car. In the in-bound business we unload it from the cars into the warehouse, putting it on the floor, and then when the wagons come for it we truck it from the warehouse to the wagon.

Q. Do you put it onto the wagon.

A. Put it on to the tail of the wagon. In cases where the package

is too heavy to be handled by one man, why we give them assistants to put it—to place it on the wagon.

Q. What force of men do you use in performing this service.

A. We use our regular receiving clerks and callers and storers and truckers, receiving and discharging clerks.

Q. How do you pay, by the hour or——

A. Pay by the hour.

Q. Pay your clerks by the hour also.

A. Our receiving clerks and discharging clerks—no we don't exactly pay those men by the hour, but pay a monthly salary, and then pay overtime, it amounts to the same thing in the long run.

Q. What is the cost, average cost per ton, of this depot handling of L. C. L. freight in Chicago.

396 A. Including the clerks?

Q. Including the clerical service incidental to L. C. L. freight.

A. We figure it sixty-three cents; 63 cents we figure it.

Q. Has that cost increased or diminished since you have been freight agent here?

A. Well—since I have been freight agent here? Well it has increased since I have been agent, it has increased, I have only been here two years, you know.

Q. How was it since 1899, do you know.

A. It has increased since 1899.

Q. What per cent.?

A. I would say—since 1899—about twenty per cent.

Q. On what account is that.

A. Well we have increased the salaries of the clerks, also of the laborers.

Q. Is there a difference in the cost of handling different classes of l. c. l. freight.

A. Yes.

Q. What you have given us is the average of all.

A. Average of all, yes sir.

Q. Where would you place soap.

A. I would say soap was about an average. Some stuff costs more and some stuff costs less.

Q. How is c. l. freight handled here, does the company load or unload it.

A. Carload stuff comes in on the team track and is unloaded from the cars by the teamsters. We give a small amount of help.

397 Q. And how about out-bound carload freight, is that loaded by the teamsters.

A. Handled the same way as the inbound.

Q. What is the difference in the amounts of the clerical service performed in connection with l. c. l. freight and c. l. freight.

A. Well on a carload there is only—take a carload of coal or a carload of lumber, it is simply one entry, it takes one expense bill, whereas on less than carloads it would make an assortment of from twenty-five to thirty different entries.

Mr. SHAVER: That was the cost of what, forty-five or fifty cents——

Mr. MAXWELL: He said twenty-five to thirty different entries.

Mr. SHAVER: Oh yes.

Mr. MAXWELL: And in the matter of claims for damages in tracing freight and so on, how does the clerical service on l. c. l. compare with that incidental to c. l.

A. Well a comparison you mean on—it would amount to a good deal more because there would be a great many more packages, a great many more entries.

Q. In estimating the cost of depot handling of c. l. freight as you have given us, have you taken into account the investment in depots and interest on the investment, and insurance.

398 A. No sir.

Q. Have you taken anything into account except the actual cost of the physical and clerical service.

A. Nothing.

Q. Have you a large investment in depots, freight depots.

A. Yes sir.

Q. That is used entirely for l. c. l. freight.

A. Yes sir.

Mr. MAXWELL: That is all.

Cross-examination.

By Mr. SHAVER:

Q. You stated you have been freight agents since 1903 I believe.

A. Yes sir.

Q. Nearly two years. Do you know of your own knowledge that there has been a net increase in the expense of handling less than carload soap since *than* 1899.

A. Well there has been an increase in the handling of the entire business, and of course there will be a corresponding increase in the handling of soap.

Q. Well you are only familiar with the handling of freight since 1903.

A. In Chicago.

Q. How.

A. I have only been familiar with the handling of freight in Chicago since 1903. My previous experience was in Memphis, Tennessee and in New Orleans, Louisiana.

Q. You estimate the increase at twenty per cent.?

399 A. Since 1899, yes sir.

Q. You are not familiar with the handling of freight since 1899.

A. We took that from the records.

Q. From the records.

A. Yes sir.

Q. You don't know it of your own knowledge.

A. Not since 1899.

Q. This increase of twenty per cent. applies to all freight.

A. All freight, yes sir.

Q. You couldn't state what the increase had been on soap either in carloads or less than carloads, could you.

A. Well I suppose it would be the same per cent.

Q. You suppose, but you haven't any personal knowledge on that subject.

A. We haven't separated any one article.

Q. Is it possible to ascertain accurately the cost of handling any one commodity or article of traffic.

A. Well it would be a different department it has to go through with, it would be a difficult matter.

Q. I can't hear very well, I have a cold in my head.

A. The different departments that the stuff would have to go through in the office and in the handling in the warehouse, it would be a difficult matter.

Q. This increase of twenty per cent I believe you attribute to an increase of salaries of clerks and wages of laborers.

A. Yes sir.

400 Q. Well the business of the roads has increased largely in the last ten years, hasn't it.

A. Yes sir.

Q. That called for an increase in the number of clerks and in the amount of labor, did it not.

A. Yes sir.

Q. It brought about an increase in the aggregate amount paid for wages and salaries.

A. As a whole.

Q. The increase in the business has also resulted in an increase in earnings, has it not.

A. Well, yes, of course if you handle more business you get more money as a total.

Q. You estimate the average cost on a ton of less than carload freight, handled at the depot, the clerical end, at sixty-three cents a ton.

A. Yes sir.

Q. That is freight in general, is it.

A. Yes sir, less than carload freight.

Q. How did you arrive at that sixty-three cents.

A. We take the men who were at that particular business, pay them, and divide the tons handled into it; we take the amount of salaries paid the clerks and laborers handling the business and divide the tons handled into that amount.

Q. Did you make a calculation in order to arrive at that sixty-three cents, figure it out.

A. Yes sir.

Q. Have you got the calculation with you.

401 A. No sir I have not.

Q. Are you on a classification committee.

A. No sir.

Q. Have you ever been.

A. No sir.

Q. You have never had anything to do with making the classifications.

A. Never had anything to do with making classifications or rates.

Q. Or rates.

A. That is all done by the traffic department.

Q. Do you know or can you state whether or not the differen between the Class 5 rate and the Class 3 less 20% rate, represen the difference in the cost of handling carload and less than ca loads soap.

A. How is that?

Mr. MAXWELL: Read the question, please.

(Question read.)

A. Well I have never figured that.

Redirect examination.

By Mr. MAXWELL:

Q. Mr. Shaver has asked you about the increase in the amou of business. Has that anything to do with the increase in the co of the labor in handling l. c. l. freight.

A. No sir.

402 Recross-examination.

By Mr. SHAVER:

When you estimated the increase in wages and salaries at 20 did you have in mind the aggregate increase.

A. The average increase.

Q. The aggregate increase.

A. Yes sir, the increase of the whole.

Q. That is all.

Mr. MAXWELL: Shall we waive signatures to the depositions.

Mr. SHAVER: Yes.

Mr. MAXWELL: Read the last answer of the witness.

(Last two questions and answers read.)

Mr. MAXWELL: I want to ask a question right there.

Mr. SHAVER: Don't lead the witness.

Mr. MAXWELL: We want to get at the facts.

Q. Please explain your last answer. I want to know wheth you mean your total wages have increased twenty per cent., or th the rate of compensation has increased twenty per cent. for the sa service.

A. Well you can figure it out the same way, the total wages the salaries either, if the salaries are increased twenty per ce your total will be increased twenty per cent.

Mr. SHAVER: If counsel will permit——

Mr. MAXWELL: Well, take the same number of men. Have t wages of those same number of men increased?

A. Yes sir.

Q. What per cent.

A. About twenty per cent.

403 Q. Then if on account of that increase of business y have to have extra men, the wages which you pay the extra men would be the percentage—twenty per cent. more th you paid the same extra men in 1899.

A. Yes sir.

Q. Is that your idea?
A. Yes sir.
Mr. MAXWELL: That is all.

Mr. SHAVER: Counsel for commission objects to these questions on redirect examination and moves to strike the question and answers out.
Mr. MAXWELL: That is all, Mr. Scaife. Much obliged.

The signatures of the witnesses to the foregoing depositions were waived by agreement of counsel, it being stipulated herein that said depositions may be read upon the trial of this cause with the same force and effect as if the witness had signed and again made oath, each to his own deposition.

404 STATE OF ILLINOIS, *County of Cook, ss:*

I, M. J. Hogan, a Notary Public in and for the County of Cook in the State of Illinois, do hereby certify that heretofore, to wit, on the 11th day of May, A. D. 1905, personally appeared before me at the office of George Willard, No. 2 Sherman Street, in the City of Chicago, County of Cook and State of Illinois, John E. Loomis, N. W. Pierce and C. T. Scaife, witnesses produced on behalf of the defendants in a certain cause now pending and undetermined in the Circuit Court of the Uniter States, Southern District of Ohio, wherein the Interstate Commerce Commission is plaintiff and the Cincinnati, Hamilton & Dayton Railway Company, *et al.*, defendants

I further certify that the said witnesses, John E. Loomis, N. W. Pierce and C. T. Scaife were by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by them was reduced to writing in the presence of the said witnesses, by means of shorthand, and afterwards transcribed upon a typewritter, and the foregoing is a true and accurate transcript of the testimony given by them as aforesaid.

I further certify that the taking of these depositions was
405 in pursuance of an agreement by and between counsel; and that there were present at the taking of these depositions Mr. L. A. Shaver on behalf of the plaintiff and Mr. Lawrence Maxwell, Jr., on behalf of the defendant.

I further certify that I am not counsel for nor in any way related to any of the parties in this suit nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 13th day of May, A. D. 1905.

MARTIN J. HOGAN, *Notary Public.*

Notary's fees $35.20 paid by defendants.

[Seal Martin J. Hogan, Notary Public, Cook County, Ill.]

And afterwards, to-wit: on the 17th day of June A. D. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, the Deposition of Clayton E. Gill, on their behalf in said cause, which Deposition is clothed in the words and figures following to-wit:

406 Circuit Court of the United States, Western District of Ohio.

5897.

THE INTERSTATE COMMERCE COMMISSION, Plaintiff,
against
THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY ET AL., Defendants.

Deposition taken on behalf of the defendants by agreement at the office of Clayton E. Gill, Esq., No. 143 Liberty Street, New York, N. Y., on Thursday, May 18th, 1905, at 11 o'clock A. M.

Present: L. A. Shaver, Esq., and W. A. Glasgow, Esq., counsel for the plaintiff; Lawrence Maxwell, Jr., Esq., counsel for the defendants.

C. E. GILL, a witness duly sworn on behalf of the defendants, testified as follows:

Q. Will you give your full name, Mr. Gill?

A. Clayton E. Gill.

407 Q. What is your age, residence and occupation?

A. Age 55, residence, New York City, occupation, Chairman of Official Classification Committee.

Q. What, in a general way, are your duties in that position?

A. Executive officer of the Official Classification Committee, receive all applications for changes in classifications or additions thereto, examine same, obtain necessary data in reference thereto, and in ordinary cases present same to the Classification Committee for consideration, also preside at the regular meetings of the Committee.

Q. These duties make you familiar with all of the classifications that have been used since the adoption of the Interstate Commerce Act?

A. Yes, sir.

Q. You are familiar with the Classification No. 20 and the change made therein with respect to the classification of soap?

A. Yes, sir.

Q. Is there a general basis of rates according to the mileage in Central Freight Association Territory?

A. Yes, sir.

Q. Please give us the rates in that territory for L. C. L. soap, according to Official Classification, No. 20 and state what, if any, in-

crease in those rates there was brought about by Official Classification, No. 20?

A. The rates on soap L. C. L. were advanced in classifica-
408 tion No. 20 in the territory you refer to from 4th Class, less than carloads, to 3rd Class, less than carloads, and the 3rd class rates obtained until March 10th, 1900, on which date the classification of soap L. C. L. was reduced from 3rd class to 20 per cent. less than 3rd class but not lower than 4th class.

Q. What was the occasion of that change in March, 1900, from 3rd class to 20 per cent. less than 3rd class?

A. The change was occasioned by complaints of various manufacturers and shippers who were interested in that advance, who contended that such advances were too great, in that the difference between 4th and 3rd classes was more than obtained between the 3rd and 2nd class, or 2nd and 1st class. That is to say, the complainants contended that the percentage in the advance from 4th to 3rd class was greater than it should be and not in line with similar advances from 2nd to 1st class. As an illustration, the difference between 3rd and 4th class rates, from New York to Chicago, is 15 cents per 100 pounds, the difference between 3rd and 2nd, is 10 cents per 100 pounds, and the difference between 2nd and 1st, is 10 cents per hundred pounds.

Q. How was the dissatisfaction of shippers and manufacturers with respect to the original rating on soap and for other articles manifested?

A. By communications received from the parties in inter-
409 est, interested shippers and manufacturers, and thereafter by a conference between representatives of the shippers and carriers, at which time the general advance in rates which took place on January 1st, 1900, was informally considered.

Q. Was the reduction from 3rd class to 20 per cent. less than 3rd class made in accordance with the application of the shippers and manufacturers?

A. No, generally speaking they asked for restoration of former basis and the 20 per cent. less than 3rd class was established as a compromise. It gave the shippers a material reduction and the carriers a slight advance in their rates.

Q. What was the effect of the rule as you finally established it in March, 1900, putting soap and other similar articles 20 per cent. less than 3rd class, upon the relation of less than carload rates to carload rates, as they had theretofore prevailed?

A. It established precisely the same difference.

Q. So that after March 10th, 1900, the extra rate that was charged for the service of L. C. L. shipments over C. L. shipments of the same commodities, of the same materials, was the same as it had been before?

A. Precisely the same.

Q. Has any complaint ever been made to your Committee that the extra charge thereby established for L. C. L. carriage as compared with C. L. carriage was unjust or unreasonable?

A. Referring to soap?
410 Q. Yes.
A. No, sir.

Q. Has any complaint every been made to your Committee against the unreasonableness of the L. C. L. classification of soap?
A. No.

Mr. GLASGOW: I object to the question as immaterial and irrelevant. I also object to the last preceding question on the same ground.

Q. Please give us the rates in Central Freight Association territory of L. C. L. soap under the present classification?
A. Central Freight Association territory so called comprises the territory west of Pittsburgh and Buffalo, including the lower peninsula of Michigan, and east of a line from Chicago to St. Louis, the Mississippi River from St. Louis to Cairo and north of the Ohio River. In this territory the official classification governs the same as it does east of Pittsburgh and Buffalo, in what is known as the Trunk Line Territory which is the territory north of the Potomac River. The official classification governs in all that territory. There is in effect in the Central Freight Association referred to what is known as a table or basis for rates between points in that territory. This table covers mileage and the rates upon the six classes referred to in the classification for distances of from five to four hundred and fifty miles. The advance in the classification of soap from 4th
411 class to the R. 26 basis at present in effect, made no change in the rates for distances under 65 miles.

The advance for 65 miles was ½ cent per hundred pounds.
70 miles 1 cent per hundred pounds.
75 miles 1½ cents per hundred pounds.
80 miles 2½ cents per hundred pounds.
85 miles 2½ cents per hundred pounds.
90 miles 1½ cents per hundred pounds.
95 miles 2½ cents per hundred pounds.
100 miles 2½ cents per hundred pounds.
110 miles 2 cents per hundred pounds.
120 miles 3 cents per hundred pounds.
130 miles 2½ cents per hundred pounds.
140 miles 3 cents per hundred pounds.
150 miles 2½ cents per hundred pounds.
160 miles 3½ cents per hundred pounds.
170 miles 3 cents per hundred pounds.
180 miles 3 cents per hundred pounds.
190 miles 3 cents per hundred pounds.
200 miles 2½ cents per hundred pounds.
210 miles 3 cents per hundred pounds.
220 miles 3 cents per hundred pounds.
230 miles 3 cents per hundred pounds.
412 240 miles 2½ cents per hundred pounds.
250 miles 3 cents per hundred pounds.

275 miles 3 cents per hundred pounds.
300 miles 3 cents per hundred pounds.
325 miles 3 cents per hundred pounds.
350 miles 3 cents per hundred pounds.
375 miles 3 cents per hundred pounds.
400 miles 3 cents per hundred pounds.
425 miles 2½ cents per hundred pounds.
450 miles 3 cents per hundred pounds.

Q. What rates out of New York City most nearly correspond with the railroads in Central Freight Association Territory?

A. With respect to what?

Q. With respect to the basis of rates; I refer particularly to rates that are not affected by water competition in the neighborhood of New York City?

A. The Erie road would be a fair example, because they practically start from tide water and run into the interior where water competition does not practically exist.

Q. Please give us the increase in rates brought about by the L. C. L. classification of soap now in force on the Erie road?

A. I have prepared some figures which do not cover all the mileage referred to in the table which I have just read, for the reason that I did not think it necessary, in that intermediate points
413 between the points I have taken are similarly effected. On the Erie road the rates on soap L. C. L. on the R. 26 basis, are 15 cents per one hundred pounds, an advance over the old 4th class basis of 1 cent per one hundred pounds.

Q. That is for 50 miles?

A. Yes, sir. For 65 miles the rate is 15 cents, an advance of 1 cent; for 75 miles the rate is 17 cents, an advance of 1 cent; for 100 miles the rate is 18 cents, an advance of 2 cents; for 150 miles the rate is 18 cents, an advance of 1 cent; for 200 miles the rate is 20 cents, an advance of 2 cents; for 300 miles the rate is 20 cents, an advance of 2 cents; for 400 miles the rate is 22 cents, an advance of 3 cents; for 450 miles, the extreme distance given in the C. F. A. table, the rate is 22 cents, an advance of 3 cents.

Q. Do you know the general result of classification No. 20, R. 26, that is in effect in territory out of New York City as compared with C. F. A. as illustrated by the Erie road?

A. The advances on the Erie, as compared with C. F. A., were greater for shorter distances and the same practically for long distances. The advance for intermediate distances being slightly less than in the C. F. A. territory.

Q. I would like you to compare the actual rates under official classification No. 20, R. 26, in the territory about New York
414 City as illustrated by the Erie road, with the rates in C. F. A. territory?

A. Taking the distance of 50 miles the present L. C. L. rate on soap in C. F. A. territory is 8½ cents per hundred pounds. The same distance on the Erie is 15 cents per hundred pounds; 65 miles, the present L. C. L. rate on soap in C. F. A. Territory is 10½ cents

per hundred pounds. The same distance on the Erie is 15 cents per hundred pounds; 75 miles, the present L. C. L. rate on soap in C. F. A. territory is 12 cents per hundred pounds. The same distance on the Erie is 17 cents per hundred pounds. 100 miles the present L. C. L. rate on soap in C. F. A. territory is 15 cents per hundred pounds. The same distance on the Erie is 18 cents per hundred pounds. 150 miles, the present L. C. L. rate on soap in C. F. A. Territory is 16 cents per hundred pounds. The same distance on the Erie is 18 cents per hundred pounds. 200 miles, the present L. C. L. rate on soap in C. F. A. Territory is 17½ cents per hundred pounds. The same distance on the Erie is 20 cents per hundred pounds. 300 miles, the present L. C. L. rate on soap in C. F. A. territory is 20 cents per hundred pounds. The same distance on the Erie is 20 cents per hundred pounds. 400 miles, the present L. C. L. rate on soap in C. F. A. territory is 23 cents per hundred pounds,
The same distance on the Erie is 22 cents per hundred
415 pounds. 450 miles, the present L. C. L. rate on soap in C. F.
A. territory is 24 cents per hundred pounds. The same distance on the Erie is 22 cents per hundred pounds.

Q. Are the rates on the Pennsylvania Railroad out of New York affected by the water competition?

A. They are in certain territory.

Q. I would like to have you compare the actual rates of L. C. L. soap under official classification No. 20 R. 26 on the Pennsylvania Railroad out of New York City with the rates in C. F. A. territory?

A. I have just given the C. F. A. so I presume it will not be necessary to repeat those, so your question will be answered if I give the Pennsylvania rates:

50 miles rate on Pennsylvania Railroad on soap L. C. L. on R. 26 basis 12 cents per hundred pounds.

65 miles rate on Pennsylvania Railroad on soap L. C. L. on R. 26 basis 12 cents per hundred pounds.

75 miles rate on Pennsylvania Railroad on soap L. C. L. on R. 26 basis 12 cents per hundred pounds.

100 miles rate on Pennsylvania Railroad on soap L. C. L. on R. 26 basis 12 cents per hundred pounds.

150 miles rate on Pennsylvania Railroad on soap L. C. L. on R. 26 basis 18 cents per hundred pounds.

200 miles rate on Pennsylvania Railroad on soap L. C. L.
416 on R. 26 basis 22 cents per hundred pounds.

400 miles rate on Pennsylvania Railroad on soap L. C. L. on R. 26 basis 24 cents per hundred pounds.

It will be noted in explanation of this table that the rates on the Pennsylvania Railroad for 100 miles or less are considerably lower than on the Erie. That is accounted for by the fact that 100 miles practically covers the distance between here and Philadelphia and teritory between Philadelphia and Baltimore which are in competition with water and the rates are low for that reason.

It will be noted further that for distance of 150 miles and upwards, where water competition is excluded, the rates on the Penn-

sylvania Railroad are as high or higher in several instances than those on the Erie.

Q. And are they all higher than in C. F. A. territory?

A. Generally that is the case.

Q. So that even taking the Pennsylvania Railroad with the water competition, the soap manufacturer in *in* New York City pays as great or a greater rate than the soap manufacturer in Cincinnati?

A. Per mile, yes, sir.

Q. Can you give us the figures for the B. and O. out of New York?

A. I have not the figures for the B. and O. for distances
417 less than 100 miles. I can give them from 150 to 450 miles.

Q. Won't you give us the figures that you have?

A. 100 miles 14 cents; increase 2 cents; 150 miles, 18 cents, increase 1 cent; 200 miles, 20 cents, increase 1 cent; 300 miles, 23 cents, increase 3 cents; 400 miles, 23 cents, increase 3 cents and 450 miles, 24 cents, increase 3 cents.

Q. What increases were made on the Pennsylvania Railroad for distances of 200 miles and upwards?

A. 3 cents per one hundred pounds.

Q. I would like to have you make a comparison with some railroad, which is affected as much or more than any other by water competition—take the West Shore Railroad?

A. The West Shore runs parallel with the Hudson River from here to Albany and their rates for that distance are competitive with the water rates—the daily boat lines.

The West Shore rates for L. C. L. soap from New York for the distances I have given are as follows:

50 miles 10 cents per one hundred pounds.
65 miles 11 cents per one hundred pounds,
75 miles 11 cents per one hundred pounds,
100 miles 12 cents per one hundred pounds,
150 miles 15 cents per one hundred pounds,
200 miles 17 cents per one hundred pounds, no advance.

418 Q. I would like to have a comparison between the Proctor & Gamble Company and other manufacturers of soap in Cincinnati and manufacturers of soap in New York with respect to some common point. Perhaps the better comparison can be made by taking some point that is equally distant say from New York and from Chicago?

A. Pittsburgh would be a fair illustration as being about equidistant from New York and from Chicago. Chicago being a very large soap manufacturing point as well as New York. The present rate on soap L. C. L. Chicago to Pittsburgh is 24 cents per one hundred pounds; that was an advance over the old 4th class rate of 3 cents per one hundred pounds. The present L. C. L. rate on soap from New York to Pittsburgh is also 24 cents, the same as from Chicago to Pittsburgh and the advance over the old 4th class rate is also 3 cents per one hundred pounds. With reference to soap in car loads classified at 5th class, the rates from New York and Chicago to Pittsburgh are the same, that is to say, 18 cents per one hundred pounds, being an advance of 3 cents per one hundred pounds.

Q. From your long experience and work of classification what do you say as to the reasonableness of the extra charge that is made for the carriage of soap in less than car loads as compared with the charge made for car loads?

Objected to as the witness is not a proper person to answer that question.

419 A. There is no question in my mind, nor has there been for ten years, but that the difference is not enough. The difference should be greater instead of less, and my reason for that opinion is that the cost of terminal service alone between two large commercial centers is sufficient, in many cases, more than sufficient to absorb the present difference. In addition to that the cost of transportation of L. C. L. over C. L. as ascertained by a very careful and exhaustive examination is from 47 to 100 per cent. greater.

Q. Is the cost of terminal service incident to the handling of L. C. L. freight, and also the cost of handling it at all transfer points increasing or diminishing?

A. Increasing constantly at large commercial centres.

Q. *Q*. On what account?

A. The cost of terminal service increases because freight requires a great amount of handling and distributing and because of the enormous quantities of traffic that we are required to handle at crowded terminals.

Q. How about the cost of labor and the character of service that is obtained?

A. The character of the service is improving all the time. The cost of labor has advanced steadily since 1900.

Q. Is Rule 10, Official Classification No. 20, covering the
420 matter of meat packers abrogated, and, if so, when?

A. It was abrogated on January 1st, 1903, from the official classification some time before the report and opinion of the Commission in these cases was rendered.

Q. Has soap L. C. L. always been 4th class?

A. No, sir, Soap L. C. L. has not always been 4th class. From April 1st, 1887 to September 1st, 1891, fancy, toilet, and castile soap in boxes was rated at L. C. L. 2nd class. During the same period of time 4th class rates L. C. L. applied only upon common soap.

Q. And during the same period what class were cearloads rated at?

A. 5th class.

Q. The opinion of the Commission with respect to C. L. soap refers to the relation of soap and other articles that are put in 5th class C. L. What have you to say with respect to a similar comparison between soap L. C. L. under Rule 26 and other articles covered by that Rule in official classification?

A. If the views of the Commission are sound with reference to the comparison in carloads, I do not see why they should not apply equally upon the comparison with L. C. L. articles rated the same in less than carloads as soap. That is to say, articles of similar character in bulk and weight, comprising articles of food consumption, groceries, etc., on which the relation of rates has not only been the

same in carloads but in less than carloads. I have a list of
421 those articles here, some 40 in number, and it appears to me that it would be absolutely unjust to reduce soap in less than carloads rated Rule 26 to 4th class and leave other articles now rated the same as soap both L. C. L. and C. L. where they are, especially in view of the comparison referred to in the Commission's Report where comparison seems to be the controlling element.

Q. Please give us the list of the articles to which you refer as being analogous to soap covered by Rule 26, Official Classification No. 20?

A. Apple or fruit butter, axle grease, candies, canned fish, canned vegetables, canned soups, and broths, coffee, cracker meal, epsom salts, fish cured in packages, grease, hoof stuffing, lard, concentrated lye, cured meats in packages, min-e meats, molasses in cans, oysters in cans, flour paste, potato flour, preserves in packages, soft soap, soap extracts, soap powders, cautsic soda in cans, starch, sugar, syrup in cans, tallow, tomatoes canned, and various items of vegetables and garden roots, washing crystals and washing powder.

Q. Are those articles in your opinion analogous to soap under the proper classification of L. C. L. soap?

A. They are and have been rated similarly, I think, all of them, both in less than carloads and in carloads.

422 Cross-examination by Mr. GLASGOW:

Q. Those articles, Mr. Gill, that you have just mentioned were at one time in — 4th class?

A. Yes, sir.

Q. Up to what time?

A. Up to January 1st, 1900.

Q. Since that time they have continued under Rule 26?

A. Since March 1900 they were reduced from 3rd to R. 26 class.

Q. Since January 1st, 1900, up to March 10th, 1900, they were 3rd class.

A. Yes, sir.

Q. These articles that you have mentioned, or the majority of them, are very much more valuable than any soap?

A. I don't understand that this complaint has reference to any particular soap but to all soaps.

Q. I am asking you now as to common soap; that is my question?

A. Many of the articles that I have mentioned are of no greater value than common soap.

Q. Which ones?

A. Starch is one item that occurs to me.

Q. How about apple or fruit butter per hundred pounds?

A. I am not advised as to the exact value of apple or fruit butter.

Q. Do you know the value of those articles?

A. I do not except in a general way. I could not say that I know the precise values of those articles but generally speaking I am familiar with the values.

423 Q. How does the value of candles compare with that of any soap per hundred pounds?

A. There is a great variation in the values of soap; there is some variation in the value of candles whether made of tallow or wax.

Q. How about canned fish or vegetables per hundred pounds as compared with common soap?

A. I should think they would be greater in value.

Q. How about coffee?

A. Coffee is undoubtedly of much greater value than common soap.

Q. How about sugar?

A. I think sugar is of less average value than soap.

Mr. MAXWELL: I object to the comparison of these articles with common soap because official classification No. 20, R. 26, covers all soap, and if a comparison is to be instituted, it should be made to all soaps.

Q. How about epsom salts per hundred pounds as compared with common soap?

A. I could not tell.

Q. How about lard?

A. I should say that lard is of greater value than common soap.

Q. How about concentrated lye?

A. Probably less.

Q. How about mince meat?

A. Mince meat is higher.

424 Q. How about molasses in cans as compared with common soap per pound?

A. I should say that molasses would be less than soap, some molasses is worth only 20 cents per gallon.

Q. So that it would depend upon the character of the molasses?

A. Yes, sir.

Q. How about oysters per pound?

A. I think they would be worth more than common soap.

Q. How about potato flour per pound?

A. It is a cheap commodity, probably less than soap.

Q. How about soap extracts per pound?

A. I think most soap extracts, compounds, etc., are in line with the values of soap. I don't think there is much difference; it depends how they are put up.

Q. My inquiry is entirely as to common soap?

A. There is a wide variation in value of common soap. Common soap as I understand is worth from 4 cents up to 16 or 18 cents per pound, and the average is hard to determine. I don't suppose even a dealer could tell the average value of common soap.

Q. I understand you to say in response to Mr. Maxwell that the articles you have mentioned were analogous to soap?

A. In their carriage as freight.

Q. You mean to say that it costs about the same to handle them both as to cost and convenience as with common or laundry soap?

A. The cost of handling would vary with respect to some
425 of the commodities. It might be more in some cases and less in others.

Q. How about lard and molasses in cans both as to cost and convenience in handling?

A. If the molasses is packed in can or cases and the lard is packed the same way, the lard and molasses would be as desirable freight to handle as soap.

Q. How about apple or fruit butter as to the cost and convenience in handling it as compared with the cost and convenience in handling soap?

A. I think it would be a very convenient freight.

Q. Soap is handled in boxes?

A. It is, largely.

Q. It is a very desirable freight to handle both as to convenience and cost?

A. You might call it a desirable class of freight. Freight in boxes, if the boxes are not too heavy and too large, is desirable freight.

Q. The soap box weighs about 60 pounds, common soap?

A. I could not say as to that.

Q. Would not all of these matters have to be taken into consideration in arriving at an analogy between the articles you have mentioned and the common and laundry soap; would not the cost of handling, the convenience of handling, the values of articles, and all of those articles of that character that you have mentioned, be necessary to take into consideration in arriving at the ques-
426 tion as to whether common or laundry soap is upon the same basis as those items?

A. The cost of handling is material.

Q. Is not the value a factor?

A. A very small factor.

Q. Do you charge more, or don't the fact than an article is very valuable, justify you in your view in charging more for its transportation than a cheap article?

A. It depends upon the nature of the article whether it is easily susceptible to damage during the process of transportation.

Q. Is not the expression used that an article of value will stand a higher rate of transportation than an article of less value?

A. It depends upon the articles. As a matter of fact we make no difference in rates based upon value unless the article is easily susceptible to damage during the process of transportation. To illustrate, the rate is the same upon an automobile that costs $10,000 as upon one that costs only $1,000. It is the same classification. We charge the same rate upon dry goods worth $4. per yard that we do upon dry goods worth only 50 cents a yard. So you will see that the question of value is one of the very unimportant items touching classification except in so far as it relates to articles easily susceptible to damage during the process of transportation. For instance, such articles as show cases or articles that are easily broken.

Q. You charge the same rate on dry goods then as you do on laces?

A. The same rate.

427 Q. On groceries?

A. No, we charge more on dry goods than we do on groceries.

Q. For why?

A. For one reason that dry goods move in less than carload lots while groceries move in carload lots.

Q. Now, I am asking about groceries in less than carload quantities; why do you charge less on groceries than you do on dry goods?

A. I am trying to think of an answer that will satisfy you. You might extend the question to any article I suppose rated 1st class in less than carloads.

Q. My question was if value does not enter into your consideration in fixing rates; why is it that you charge more on dry goods than you do upon groceries; that is a clear cut question?

A. Dry goods are more susceptible to theft and more susceptible to damage; the quantity handled, which is an important matter, is comparatively small as opposed to groceries, the value of the service is greater.

Q. Damage is dependent upon the value of the article, too, is it not?

A. Yes, sir.

Q. Let us take some other things; how do beans compare with common or laundry soap?

A. In what respect?

Q. In convenience of handling and cost of transportation?

A. I think they would compare favorably.

Q. How about candle tar?

A. Favorably, I should say.

428 Q. *Cold* tar?

A. The same way.

Q. Alumina?

A. Alumina is a desirable freight.

Q. Alum?

A. The same.

Q. Fish, pickled or assorted?

A. Good packages to handle.

Q. Glucoes?

A. The same way, shipped in boxes and barrels it is usually considered desirable freight.

Q. Grape sugar?

A. Is rolling freight in barrels and is less expensive to handle.

Q. How about putty?

A. It is easily handled.

Q. About as easily handled as soap?

A. About the same; there is not much difference in the cost of handling.

Q. How about manganese both as to cost and convenience in handling?

A. It might cost more than soap and it might cost less.

Q. How about convenience and cost of handling?

A. It depends how it is handled.
Q. How about paint in barrels?
A. About the same as to handling.
Q. About the same as soap?
A. About the same if in cans, packed in cases.
Q. How about lead as compared with common soap both in the cost and convenience of handling it.
A. I do not think there is much difference. I thought the answer that I made would answer all your questions. That is
429 when it is presented in similar packages there is not very much difference in cost of handling.
Q. How about potash in barrels and casks, about the same cost and convenience in handling?
A. About the same, probably less than soap.
Q. How about peas dried and split? About the same as soap as to cost and convenience in handling?
A. Easy to handle.
Q. Putty in pulp?
A. That is always shipped in packages.
Q. Pewter, sheet iron, sled bottoms, etc.?
A. If put up in bundles they are not difficult to handle. Sheet iron is very heavy.
Q. Potatoes and seed potatoes, how do they compare as to cost and convenience in handling?
A. Potatoes are usually put in barrels or sacks; if in barrels they are rolling freight.
Q. Now, all these articles that I have mentioned to you are in the 4th class official classification in less than carloads: Will you explain why if that is correct why soap should not be in the same class, because you have said that the cost of handling and the convenience of handling these articles are about the same as soap?
A. There is scarcely an article in the official classification that has not some peculiar condition to account for in its classi-
430 fication; perhaps the chief thing that may be said in reference thereto is that competitive conditions vary with respect thereto.
Q. That is your answer to my question?
A. Yes, sir.
Q. Mr. Gill, on April 1st, 1887, your first official classification of soap in less than carloads was in the 4th class and now it is in the 5th class?
A. Common soap.
Q. That remained so up to January 1st, 1900?
A. Yes, sir.
Q. For thirteen years that remained that way?
A. Yes, sir.
Q. What did that difference between 4th and 5th classes during those thirteen years represent?
A. It was not in the 4th and 5th classes during that entire time. I understood you to refer to L. C. L. soap. There was a difference in the carload rating during that portion of time which you have mentioned.

Q. What were they?

A. Common soap was rated at L. C. L. 4th class and C. L. 5th class up to September 1st, 1891; from September 1st, 1891, to December 31st, 1894, soap in packages was 4th and 6th classes; from January 1st, 1895, to January 14th, 1895, soap in packages was 4th and 5th classes; from January 15th 1895, to December 31st, 1899, soap in packages in less than carloads was 4th class and in carloads 6th class.

Q. Did that difference in less than carload classification in
431 the period you have mentioned, represent, in your opinion, or in the opinion of those who arranged the classification the excess in the cost of handling soap in less than carload lots over carload lots?

A. It did not represent the proper difference in my opinion and I do not think that it represented the views of the carriers.

Q. Why was it allowed to remain?

A. Nearly all of that period covered a period of great depression in business and things were at the lowest ebb. The carriers during that time did not wish to disturb conditions any more than was possible, and very few advances in classification were established during that time.

Q. I call your attention to the fact that I am not talking about any advances in classification, but I am talking about the relative classification in carloads and less than carloads. That could have been decided without increasing if they did not represent properly the proper situation as to carloads and less than carloads?

A. There is no difference between less than carloads and carloads in the ratings of soap, during that time, while the rating was L. C. L. 4th and C. L. 6th class, that is, we have not disturbed the relation of rates between carloads and less than carloads.

Q. You have not disturbed what?

432 A. The relations between L. C. L. and C. L. That is the same as it was formerly.

Q. When you speak of the cost of transportation of less than carload traffic as compared with carload traffic, being from 47 to 100 per cent. greater, you are referring to all characters of less than carload traffic?

A. All classes.

Q. That has no bearing upon the relative cost of soap alone?

A. It includes soap with all other classes.

Q. Everything else?

A. Yes, sir.

Q. You say that the difference in the rate on less than carload traffic on soap as compared with carload traffic is absorbed in the cost of terminal service alone?

A. Yes, sir.

Q. Is it not a fact that less than carload traffic is much more valuable to the Railway Company in the revenue it produces than carload traffic?

A. I have testified before the Commission that in my opinion the L. C. L. traffic, handled by carriers, did not produce any profit, that

our profit was derived wholly in the handling of carloads. I believe today that the ratings applied in the territory we are considering on less than carload traffic are absolutely unremunerative to the carriers.

Q. And this amounts to something more than 65 per cent. of the entire traffic of the road?

A. I could not say as to the percentage.

Q. It is more than one half?

A. I could not say. I think the reverse is true, but I am
433 not qualified to speak accurately on that point.

Q. You mean to say that on the less than carload traffic the railway companies receive no profit whatever?

A. That is my opinion.

Q. Does it still remain the fact in your view of the situation?

A. Yes, sir.

Q. Why is it then if that be true that railway companies do not in the territory that you speak of do not permit the collecting by an agency of large amounts of less than carload traffic and shipping it in carload lots consigned at points of destination to the shippers to be distributed?

A. Because a rule of that kind, if established, would be discriminating. It could not be followed by all L. C. L. shippers. That is to say, while it could be applied to some extent from large commercial centres where it would be possible to accumulate every day enough less than carload shipments to make a carload, it could not be done at smaller centres where a carload could not be obtained in one day, where the shippers perforce would be obliged to ship in L. C. L. lots.

Q. I suppose the railways would be willing to do that to everybody?

A. The railways are encouraging and inviting the movement of freight in carloads to the greatest possible extent as opposed
434 to handling it in less than carloads, but we can never expect to handle all traffic in carloads because much of it is shipped every day from distributing points in small lots to supply the requirements of the retail dealer.

Q. The objection on the part of the railway companies to the line that I have suggested, is entirely that they would be thereby permitting discrimination?

A. I would not say entirely, but very largely so.

Q. The question of revenue does not appeal to it.

A. No, sir.

Q. What other ground?

A. The railways would be very glad to handle all the freight in carloads.

Q. The collecting by an agency of less than a consignment from shippers of freight, as I understand you, is the ground on which the railway company object is a discrimination and that no question of revenue impels them to take that position?

A. No, sir.

Q. And discrimination is the only ground upon which they decline to permit it?

A. Practically.

Q. What other ground is it?

A. I do not know of any other ground but I would not like to say that it was entirely for that cause.

Q. I understand you to say that there has been no appli-
435 cation made to you for a change in the classification by shippers from 20 per cent. less than 3rd class on less than carloads to a lower class? If that were made to you would you make the change?

A. I do not think we would.

Q. That has nothing to do with the position you take on it at all?

A. No, sir; other shippers make no complaint.

Q. This is the case of Proctor & Gamble Company?

A. I do not think Proctor & Gamble themselves are dissatisfied with present rate. I have reason to believe that such is the case.

Q. This was a case that was brought by Proctor & Gamble and their order was entered.

A. Their chief desire was to obtain a reduction in the carload rating of soap.

By Mr. SHAVER:

Q. Mr. Gill, the first official classification, classification No. 1, was adopted April 1st, 1887; were you a member of the Classification Committee that established that classification.

A. No, sir; I was not.

Q. Can you name the members of that Committee?

A. I could not.

Q. They were expert railway officials, were they not, thoroughly qualified to act in the premises?

A. They were all traffic officials of railroads in the terri-
436 tory which we have been discussing?

Q. Thoroughly qualified to discuss the question?

A. I could not say.

Q. In that first classification adopted, soap in carloads was put in class 5 and less than carloads in class 4. Did the difference between class 5 rate and the class 4 rate then represent the excess of handling soap in carloads?

A. Not in my opinion.

Q. It did in the opinion of the Committee?

A. I could not say. You must understand that the first classification was hastily prepared in order that the railroads might have a working basis for re-establishment of their rates necessary because of the early establishment of the Interstate Commerce Law, and they took perhaps 100 classifications and united them into one. It was done in a hurried way, working day and night for, I believe, about ten days and the classification Number One was the result. It was a very hastily prepared document, the first one of its kind and a compromise to a certain extent of west bound and east bound rates and local classifications.

Q. Was the difference — class 5 carloads and class 4 less than carloads the proper relation between carloads and less than carloads when that classification was adopted?

A. No, sir, I do not think so.

437 Q. You say that that classification was adopted hastily?

A. Yes, sir.

Q. On January 15th, 1895, a classification was adopted under which carload soap was put in class 6 and less than carload soap allowed to remain in class 4, where it had been since 1887. Did that difference in classification between carloads and less than carloads represent the difference in cost of handling soap in carloads and less than carloads?

A. No, sir.

Q. At that time did that classification represent the proper relation which should be maintained between carload and less than carload soap?

A. I do not think it did.

Q. That classification was not adopted hastily?

A. No, sir.

Q. It was adopted some eight years after the one you say was adopted hastily?

A. Yes, sir.

Q. And soap in less than carloads had been in class 4 during the whole of those eight years?

A. Yes, sir; that was a season of great depression when manufacturers were trying to force rates down, in fact many railroads when into the hands of a receiver during that period.

Q. Did the necessity for a receiver arise from this classification on soap?

A. I think it had something to do with it.

438 Q. Were these classifications under which carload soap was placed in class 5 at one time and at another time in class 6, but less than carload soap allowed to remain in class 4, made by expert railway officials after due consideration of all the matters which should be considered in establishing a class and rate?

A. It very often happens that a meeting of the Classification Committee is held and during its session perhaps 75 per cent. of the specifications therein are not given consideration, the Committee considers only the list of applications which are presented to them for changes in certain commodities. That is to say, they do not take up at all meetings the classification of all commodities and revise same and bring them up to what may be termed the commercial requirements of that time. Therefore it is very likely that the rating on soap at the time you speak of was not given any consideration whatever by the Committee.

Q. You say that in your experience soap in less than carloads was improperly classed?

A. It was.

Q. During those thirteen years while less than carloads was 4th class, the Committee did consider soap didn't it, because they changed the class on carloads?

A. They considered the classification of common soap.

Q. They changed the classification of common soap?

439 A. And reduced it to 6th class in car loads on the order of the Commission.

Q. And subsequently they put it to class 5?

A. Up to January 1st, 1895, and reduced it a short time thereafter because some of the railroads leading from Cincinnati refused to enforce the classification.

Q. That was the first instance?

A. Yes, sir, in the second instance we put it back ourselves because certain of the railways did not comply with its conditions.

Q. The order of the Commission placing carloads soap in the 6th class was issued June 22nd, 1891, and in January, January 15th, 1895, the Classification Committee put carload soap in 6th class?

A. Yes, sir, but we first reduced it to 6th class in carloads on September 1st, 1891.

Q. My point is that the Classification Committee did consider the classification of soap in that they changed that classification in carloads?

A. Yes, sir.

Q. My point is that they did consider it, your statement is that they did not?

A. I said they might not have.

Q. Less than carload soap was allowed up to January 1st, 1900, the date of the official classification No. 20, a period of 13 years, did no- materially change or increase in the cost of handling carload soap occur which called for an advance in the classification or the rate?

A. The advance on carloads took place at that time. Most
440 assuredly we advanced about 800 articles at that time because of the increased cost of operation and maintenance.

Q. So that the cause of the change or increase in the cost of maintenance and operation of soap occurred January 1st, 1900?

A. That was the chief cause. We desired more revenue upon property that we thought could stand an increase.

Q. From April 1st, 1887, up to January 1st, 1900, there were some 19 classifications made effective?

A. Yes, sir.

Q. And in all of those classifications was common soap less than carloads in the 4th class rate?

A. Yes, sir.

Q. Were all those 19 classifications established by Committees composed of expert railway officials after due consideration of all the matters proper and necessary to be taken into account in establishing a classification?

A. The classification committee was in existence during the time that you mention and the committee is composed of traffic officials of various railroads. I could not term them to be experts.

Q. They are selected with a view to their qualifications for the purpose?

A. They are selected more particularly from a geographical standpoint.

Q. And they are not selected with a view of their competence?

A. Not solely.

441 Q. It is a very important committee?

A. It is a very important committee.

Q. Have not the improvements in appliances and facilities for handling and transporting traffic which have been made since 1887, or within the last 18 years, reduced the expenses of handling traffic? Not the aggregate expense—that has grown from increase of business, but the expense per 100 lbs. or per ton?

A. I am of the opinion that the contrary is true.

Q. That comes from the fact that the business has increased?

A. That is one reason for it, but the carriers have all been obliged to provide enormous increased facilities which have more than overcome the increase which they have received from increased business.

Q. I refer to the improvement in the character of the appliances and facilities, are they not labor saving?

A. I do not think so.

Q. Well, what is the object?

A. I believe it costs a little more to-day because of the many labor saving appliances. Take the self coupling device, it enables them to get along with less help in a way, of course, but the damages that are sustained by freight in transportation has largely increased.

Q. Then they are a detriment rather than an improvement?

A. I know that some people are of the opinion that while
442 they are not a detriment, the cost has been increased.

Q. They are really then no improvement?

A. They are an improvement to the extent that they save human life. A man does not have to step in between the cars and lose his hand or life in coupling cars. I do not think the cost has been reduced to any appreciable extent. As a matter of fact they state that the expense of handling freight has been increased.

Q. Does the classifications of these articles represent the proper relations between those articles in carloads and less than carloads?

A. I do not think so.

Q. Have you been a member of any of the classification committees that have established these classifications?

A. No, sir.

Redirect examination by Mr. MAXWELL:

Q. What was the occasion of putting all kinds of soap in the same class?

A. It resulted from the decision of the Interstate Commerce Commission in the case of Frederick P. Beaver and William D. Chamberlain, doing business under the firm name of Beaver & Company, against the Pittsburgh, Cincinnati and St. Louis Railroad Company, *et all.* filed October —, 1890, and decided May 15th, 1891. In deciding this case the Commission used the following language:

"Where two kinds of soap are made use of for the same
443 purpose and are advertised and held out to the world as suited for like purposes and are substantially equal in value, they are both alike for purposes of transportation, and should be placed in the same classification. The soaps known as the "Ivory" and the "Grandpa's Wonder" fall within this rule. Both are represented as suitable for laundry and also for toilet purposes and both are

used for those purposes. It would, therefore, be unjust discrimination to place one of them in the classification as toilet soap and the other in a much lower classification as laundry soap."

Prior to that decision we had been exacting 2nd class L. C. L. classification on fancy, toilet and castile soap, which represented 25 to 35 per cent. of the whole. That is all kinds and classes of soap. But in view of that decision and also in view of the fact that toilet soap manufacturers thereafter began to describe their soaps as being both suitable for toilet and laundry purposes, we came to the conclusion that it would be difficult, if not impossible, to do justice alike to all manufacturers and at the same time draw a line of distinction between the soaps in question, and when the question was presented to the Classification Committee for consideration that is to say, the question of whether we would unite the ratings of common
444 soap and toilet soap, the Committee were almost unanimously disposed to make that combination by putting all soaps in 3rd class rather than 4th class. That is to say, to advance the rating of common soap one class and reduce the classification on toilet soap one class.

Q. You are speaking now of L. C. L. soap?

A. Yes, sir, and if I recall the discussion of the matter correctly, the reason why that was done, that is to say, why we did not establish 3rd class instead of 4th class, was because of a plea by a member of the Committee located at Cincinnati, who evidently appreciated the Proctor & Gamble business more than he did the higher rating.

Q. A member of the Committee, you say?

A. Yes, sir.

By Mr. GLASGOW:

Q. Who was that man?

A. I do not care to say.

By Mr. SHAVER:

Q. Did you hear him make that statement?

A. I did.

By Mr. GLASGOW:

Q. Was he a member of the Classification Committee?

A. He was.

Redirect examination by Mr. MAXWELL:

Q. Did the Interstate Commerce Commission in the bill that
445 they filed in this case seek to prevent 20 per cent. less than 3rd class to apply on L. C. L. common or laundry soap. Is it a practical thing to apply that to common or laundry soap alone?

A. We did not consider that it was practical to continue any distinction between toilet and laundry soap at the time to which I refer and I do not think it would be practical to do it to-day.

Q. Soap comes to the railroads in boxes?

A. Yes, sir.

Q. How can you tell whether it is common or laundry soap or toilet soap?

A. You have to open the boxes and examine the contents.

Q. Is that practical?

A. Only at points where we have inspection officers.

Q. How would you determine whether it was common or laundry soap?

A. That is a thing which would be difficult to determine.

Q. Take Proctor & Gamble's Ivory soap, how could you tell that?

A. Proctor & Gamble's ivory soap is probably used in 90 per cent. of the cases as a toilet soap.

Q. Under this ruling it would be still a common or laundry soap?

A. I do not think any family uses ivory soap as a laundry soap exclusively.

Q. What degree of soap with respect to its value would come under the head of common or laundry soap?

A. Only the cheapest kind of bar soap that is never used
446 for toilet purposes except by people who cannot afford to use any better.

Q. Is ivory soap laundry soap?

A. No, sir.

Q. It is used for laundry purposes?

A. To a limited extent only.

Q. Why do you say you would not be obliged to carry it as laundry soap?

A. Under the Beaver opinion we would be obliged to carry it as a laundry soap.

Q. It would be of greater value than other soaps. Ivory soap has a much greater value than many kinds of properly called laundry soap?

A. Yes, sir.

Q. Then if you were to give ivory soap, which is advertised as a laundry soap, the same rating as a common soap, which is used for no other purpose than a laundry soap, would that be a fair rating?

A. No, not if we tried to maintain a higher rating on toilet soap.

Q. Do the same conditions of discrimination apply to-day that were adverted to by the Interstate Commerce Commission in the Beaver case?

A. Yes, sir.

Q. In your opinion, therefore, if the railroads were to conform to the order of the Commission to carry everything that could be quoted under laundry soap in a class by itself, they would present the same instances of discrimination that were provided against by the Beaver case?

A. Yes, sir.

447 Q. In other words, Proctor & Gamble would be getting a soap which is called laundry soap, but largely used for toilet purposes, carried at common soap rating?

Objected to as leading.

A. Yes, sir, as a matter of fact Proctor & Gamble's ivory soap

never should have been taken at the laundry soap rating; it was practically used and is to-day used as a toilet soap.

By Mr. GLASGOW:

Q. That is your opinion?

A. Yes, sir.

Q. Didn't the people find out that it was a laundry soap?

A. The opinion said that soaps that were serviceable for the same purposes and substantially equal in value should be placed in the same classification. They were speaking of Beaver soap *versus* Proctor & Gamble's soap which were of similar value.

Q. Did they hold in that case that ivory soap should be considered laundry soap?

A. No, sir, they did not.

Q. Has anybody ever considered that it should be considered laundry soap?

A. Yes, sir.

Q. You said you could not tell from the packages whether it was laundry soap or not, and, therefore, it is impractical to carry out that classification?

A. Yes, sir.

Q. And you say when the packages come to you and boxed up, you cannot tell whether it is common or laundry soap or
448 some other soap, and, therefore, it is impractical to carry out that classification?

A. Yes, sir.

Q. Supposing a man brings a can of oil to you and tells you that it is cottonseed oil, how do you know whether it is cotton seed oil or essential oil?

A. By examination.

Q. Could you not open the package?

A. We could where we have inspectors, and inspectors examine the package.

Q. How do you do as to soap?

A. The same.

Q. The average examiner would be unable to tell what kind of oil you had in the package?

A. He might not.

Q. That is no reason why this classification should not be applied?

A. Applied to one commodity.

Q. Have you not got a hundred commodities in your classification like that?

A. No, I do not think we have. We do not draw the line on drygoods, hardware of one kind and hardware of another, but give all the same rating.

Q. Don't you know where a person shipping hardware in a package and puts in drygoods?

A. I never heard of such a case.

Q. You know of no way that you can prevent every case of fraud upon your classification?

A. No, sir.

Q. The fact is you have the same protection on soap that you have on other articles, that the soap should be marked, whether toilet or fancy or common or laundry, that would afford you the same protection as in other cases? I am talking about your cases?

449 A. I personally think the line of distinction could not be maintained, that is, one classification on laundry and common soap and another on toilet and fancy soap.

Q. Do you think the classification on common soap should be the same as on toilet and fancy soap? Toilet soap, which is very much more expensive than common soap, do you think there should be the same rate upon that as upon common or laundry soap, which is a very cheap article?

A. The cost of service is the same.

Q. There are a great many articles in the 4th class that cost just as much to handle?

A. I can't say as to that. I have answered in a general way. I cannot say from my own knowledge that it costs just as much to handle a package of soap as it does to handle a package of iron.

Q. Have you not mentioned to me a large number of articles that you said cost just as much to handle as soap costs to handle?

A. I did not so state; I said the articles were desirable freight.

Q. Didn't you say that the convenience and cost of handling was about the same?

A. Might be about the same.

Q. What do you mean by about the same?

A. I can not answer your question without reservation because I do not know whether it costs the same to handle a box of soap as it costs to handle other property, the cost is different at different

450 points.

Q. I want to know this Mr. Gill, it is a perfectly clear cut question, is not your classification based on cost of handling?

A. Cost of service is a factor.

Q. What is service?

A. Handling is included therein.

Q. I take it that service is a large factor then?

A. Yes, sir.

Q. Is not your classification based upon service?

A. Yes, sir, that is one of the controlling factors.

Q. How can you make all those classifications up if you have no fixed definite idea of the cost of service?

A. We have a pretty clear idea of the cost of service.

Q. And it is based upon the cost of service upon each particular article?

A. Not entirely; that is one of the elements.

Q. What is the other?

A. Do you want them in their order?

Q. Yes?

A. The principal elements in my opinion in rate making and their order of importance, are: cost of service, competitive and commercial conditions, volume, density, distance, value and risk of loss or damage.

Q. That is in establishing rates ?
A. Yes, sir.
Q. And that in establishing classifications?
A. Yes, sir.

451 Q. Now, what question of competition did you take into consideration in putting soap in 20 per cent. less than 3rd class?

A. There is no article strictly competitive with soap.
Q. What then, other than cost of service did you take into consideration in putting soap into 20 per cent. less than 3rd class?
A. Competitive and commercial condition, volume, density, distance, value and risk of loss or damage.
Q. Now, competitive and commercial condition, did you take into consideration in raising soap to the 4th class to 20 per cent. less than 3rd class?
A. We did not believe the difference between carloads and less than carloads was sufficient.
Q. Is not that a commercial condition?
A. Yes, sir.
Q. A competitive condition?
A. Yes, sir.
Q. I want to know if there was any competitive or commercial condition that entered into that matter?
A. I think so.
Q. Did volume enter into it?
A. No.
Q. Did value enter into it?
A. No.
Q. Did risk of loss or damage enter into it?
A. No.
Q. Then the only condition there was was the cost of service?
A. Yes, together with commercial conditions.
Q. You have testified here this morning that there was a number of articles in the 4th class made up in your classification in which the cost of service was no less than the cost of service on

452 C. L. C. lots of soap?

A. I have not so testified. I said the articles were desirable freight.
Q. Let us take alumina and paints?
A. I cannot say with reference to those articles. I am not aware whether the cost of service is greater or less.

It is stipulated and agreed by counsel that the signature of the witness is hereby waived.

453 *Certificate.*

THE STATE OF NEW YORK, *New York County, ss:*

I, Henry J. Dorgeloh, a Notary Public in and for the County and State above named, duly commissioned and qualifiefid do hereby certify that the above named Clayton E. Gill was by me first duly sworn to testify the truth, the whole truth, and nothing but the

truth, and that the deposition by him was reduced to writing by W. B. Richardson and was continued from day to day as above set forth.

The signature of the said witness was waived by Counsel.

That said deposition was duly taken by me pursuant to and at the time and place and within the hours specified in the notice hereto attached, and that I am not Counsel, Attorney or relative of either party, or otherwise interested in the event of this suit, and was at the time of so taking the said deposition a Notary Public in and for said County and State.

In Testimony Whereof, I have hereunto set my hand and official seal, this 18th of May A. D. 1905.

[SEAL.] HENRY J. DORGELOH,
Notary Public, Kings County, Cert. Filed N. Y. Co.

Stenographer's Fees, $52.20, paid by defendants.

454 And afterwards, to-wit: on the 19th. day of June, A. D. 1905, came the Defendants by their Solicitors and filed in the Clerk's Office of the Court aforesaid, Depositions of J. Q. Van Winkle, and others on their behalf, which Depositions are clothed in the words and figures following to-wit:

455 Circuit Court of the United States, Southern District of Ohio, Western Division.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL., Defendants.

Depositions on Behalf of the Defendants, Taken Pursuant to the Annexed Notice.

Present:

On behalf of the Petitioner—Mr. W. A. Glasgow, Jr., Mr. S. T. McPherson, District Att'y.

On behalf of Defendants—Mr. Lawrence Maxwell, Jr., representing the C. H. & D. Ry. Co., P. C. C. & St. L. Ry. Co., and the Pennsylvania R. R. Co. Mr. Edward Colston representing the B. & O. S. W. R. R. Co., and the B. & O. R. R. Co. Mr Samuel O. Bayliss representing the C. C. C. & St. L. Ry. Co., L. S. & M. S. Ry. Co., and the N. Y. C. & *R.* R. R. R. Co.

Taken at the office of Maxwell & Ramsey, in the Neave Building, Cincinnati, Hamilton County, Ohio, on April 15, 1905.

456 J. C. VAN WINKLE, being first duly sworn, deposes and says, to-wit:—

Direct examination.

By Mr. MAXWELL:

Q. State your name, age, residence and occupation?

A. I am fifty-four years old; am General Superintendent of the C. C. C. & St. L. R. R. Co.—Big Four; and live at Indianapolis, Ind.

Q. How long have you held that position?

A. A little over twelve years.

Q. How long and in what various capacities have you been engaged in the railroad service?

A. I have been in railroad service forty-four years, in almost all capacities, clerk, station-agent, yardmaster, train-master, superintendent, and the General Superintendent.

Q. Does your jurisdiction as General Superintendent extend over your entire road?

A. Yes, sir, it does now. Up till last month it did not extend over that part known as the P. & E.—Peoria & Western.

Q. That is a comparatively small portion of your road?

A. That is three hundred and fifty-two miles of the total.

Q. Total of what?

457 A. Of the twenty-five hundred miles.

Q. What are the different termini of your road? Between what points does your road run?

A. Well, the termini are at Cincinnati, Springfield, Columbus, Cleveland, Toledo, Sandusky, Chicago, Peoria, East St. Louis, Cairo, Louisville, Benton Harbor, Mich.

Q. How many stations are there on your line?

A. I cannot answer that definitely; about five hundred and fifty as I remember it.

Q. We are investigating in this case the relative cost of handling and transporting car-load and less than car-load freight. We have heretofore had evidence with respect to the cost of depot and transfer handling of less than car-load freight. I do not wish to direct your attention in this examination to that, but to ask you whether aside from the extra cost of depot and transfer handling of less than car-load freight there is a difference between the cost of transporting l. c. l. and c. l. freight?

A. There is a material difference in the cost of moving general merchandise known as less than carload freight, as compared with what we call carload freight.

Q. Please state, in a general way in what that difference consists?

A. The difference consists in hauling a great deal more car weight in proportion to the revenue weight on the l. c. l. business as

458 compared with the c. l. business.

Q. On what character of trains is l. c. l. freight carried?

A. Generally on merchandise trains, what are known as merchandise trains, moved on a very much faster schedule than the lower grades of freight. This makes it necessary to give merchandise

trains proportionately less tonnage, so that increased time can be made.

Q. What is the average tonnage on your road of l. c. l. freight?

A. About five and a half tons per car.

Q. Is it necessary in the operation of your road and in making the various calculations for carrying on your business, to estimate the tonnage of l. c. l. freight; and have you done so?

A. Yes, sir, it is necessary so as to know something about the way to load your trains, and all that kind of thing, to have a general knowledge of the average tonnage per car; and for our own purposes we use the estimate of five tons per car for merchandise.

Q. Is the average of five and a half tons which you have given a liberal estimate for l. c. l. freight?

A. I think so, yes, sir.

Q. What is the average tonnage of car-load freight?

A. About twenty-two tons per car.

459 Q. What is the average weight of the empty cars themselves?

A. About eighteen tons.

Q. Can you give us a statement in tons, or percentage, or otherwise, of the extra cost of transporting the same amount of tonnage in c. l. and l. c. l. freight; if so, please do so.

A. Taking one thousand gross tons as a train basis, merchandise with an average load of five and a half tons per car, eighteen tons as the weight of the car, that is a total of twenty-three and a half tons per car. A train of 1,000 gross tons would be forty-three cars. Those 43 cars would contain 236 tons of revenue freight. The weight of the cars would be 764 tons. Only 23.6 per cent. of the total tonnage would be revenue freight. Using the same basis of 1,000 gross tons on car-load freight, the average load of 22 tons and the weight of the car at 18 tons, making a total of 40 tons, a train of 1,000 gross tons would consist of 25 cars. Five hundred and fifty tons would be revenue freight; four hundred and fifty tons would be the weight of the cars; or 55 per cent. of the total tonnage would be revenue freight. Using this same basis of 1,000 tons as a train load basis, there would be 125 per cent. more revenue freight in a train of car-load freight than in the train of merchandise. Using this same basis again of 1,000 tons as a train load, it takes 25 cars to handle 550 tons of car load freight. It would take 100 cars to

460 handle the same weight of general merchandise.

Q. Then according to your statement it requires in point of investment in equipment four times as much in the case of l. c. l. on an average than in c. l.; is that correct?

A. Yes, sir, in round figures.

Q. How about the wear and tear and depreciation, and cost of lubrication?

A. Well, we would have just four times as much invested in equipment; four times as much depreciation; four times the lubrication, and so forth, to carry the same amount of general merchandise as we would car-load freight.

Q. How about the comparative cost of the train service in men and other items?

A. Well, that differs with the conditions. I don't hardly know how to answer that except in a general way. The expense depends almost entirely on the speed that is to be made. To answer the question, I will give you a few comparisons. I made a memorandum of what we call—I made a memorandum of three what we call high class trains that handle merchandise and high class freight, and are run fast. One of these trains between Chicago and Cincinnati hauls six hundred and fifty tons. The same class of engines on a slow train would haul 950 tons, or an increase of forty-six per cent. Another high class train, from Indianapolis to Cleveland, hauls seven
461 hundred tons. The same class of engine on a slow train would haul 1050 tons, or an increase of fifty per cent. Another high class train, from Cleveland to St. Louis, hauls 1150 tons. The same class of an engine on a slow train would haul 1460 tons, or an increase of 26 per cent. Now the difference in the rating of the engines on those several trains is covered in part by the speed that it is necessary to run the train. I have shown here, in one instance, that the difference is fifty per cent.; in another instance, only 26 per cent. I would say that a fair general average would probably be, that the slow train would haul one-third more than the average merchandise or high class train.

Q. Do you mean one-third more of gross weight including the car and contents?

A. Yes, sir, I am dealing with gross in this case entirely.

Q. Do you pay your trainmen by time, or by the mile?

A. By the mile. There are isolated exceptions to this, but the general practice is by the mile.

Q. Does that include the engineers?

A. Yes, sir.

Q. Does it also include the firemen and brakemen?

A. Yes, sir.

Q. You have used the term, "slow train." What is a slow train?

462 A. Slow train is made up of general carload freight that does not require such quick movement, such as coal, grain, lumber, hay, iron, and general commodities handled by carloads.

Q. It includes carload business—covers carload business?

A. Yes, sir. There is some carload business, however, that we handle on the fast trains, such as perishable freight livestock, and that kind of thing; but that is handled not in the high class trains.

Q. Well, a carload of soap, would that be handled on slow trains?

A. Yes, sir, that would be considered a low grade of freight.

Q. What is the occasion or necessity for handling l. c. l. freight on the fast trains?

A. Well, sir, I suppose there are two reasons for that; the first is that the shipping public demand fast service on the high grades of freight, second, competition has made high class service necessary.

Q. The Traffic Department is distinct from your department, is it?

A. Yes, sir.

Q. Are you required or expected by the Traffic Department to forward l. c. l. freight on those fast trains; is that the custom
463 and the practice?

A. Yes, sir.

Q. Do the fast trains that carry l. c. l. freight have schedule time?

A. Yes, sir; just the same as passenger trains.

Cross-examination.

By Mr. GLASGOW:

Q. Do you mean that all l. c. l. traffic is carried on fast trains?

A. No, sir. I will try to make that plain. I will cite a few cases on that. I think I can illustrate it better by the practice, if you care to have me.

Q. I just want to know that fact. You can make any explanation you see proper.

A. Generally speaking, the bulk of the merchindise is handled on trains especially scheduled for that purpose. As an illustration, merchanise we will say from the East, New York, Boston, etc., to the West, such as Cincinnati, Indianapolis, St. Louis, etc.; we have out of Cleveland regular schedule fast trains to move that merchandise, and it is made a specialty. We have out of every large center trains provided for that special purpose to handle that merchandise. Now there are a great many intermediate points where merchandise is moved in special cars from these smaller forwarding and re-
464 ceiving points, and they are not always hauled in some special train. They are picked up by some slower train probably, and moved a shorter distance. Take Indianapolis if you please, a distributing point. Cars are loaded for nearby points, and they are moved some time during the night so as to be at their destination next morning. They are not all put in some special fast trains, but the bulk of merchandise is handled in trains specially scheduled for that purpose.

Q. That is through freight, is it—freight delivered to you from connections—freight not originating on your line, but going to points either from connecting line or on your line or connection?

A. It covers both, sir, the business from connections, and the business that originates locally.

Q. If you have a shipment of merchandise from Cincinnati to a local point on your line composed of soap in less than carload lots and merchandise of a similar character, do you mean that you run that fast freight?

A. Yes, sir.

Q. Why?

A. We run it fast freight unless it is some nearby point where we have plenty of time to make the delivery the next morning. Take stuff that goes any considerable distance, where the next morning delivery is necessary or desirable——

Q. I am not talking about that.

465 Mr. MAXWELL: Let him complete his answer.

The WITNESS: If it is put in those fast trains. I think I can

explain, say take it out of Cincinnati we have trains scheduled out of here, if you please, at a time in the evening that we can move all the merchandise that has laid here during the day, or that possibly comes from connections. That train runs out here at such a time in the evening that it can make next morning's deliveries just as far away as possible; and that is a special schedule high class train.

Q. That is for carrying high class merchandise, is it?

A. Yes, sir.

Q. You don't consider soap high class merchandise?

A. We consider everything that is in less than carload lots as merchandise and give it all the same class of service.

Q. I understand, but didn't you say a few minutes ago that soap was low grade freight?

A. In the carloads, yes, sir.

Q. Well, it don't change its identity by being less than carload lots, does it? It don't change its character?

A. No, sir, but I think the demand for quick service is greater on the small lots than on the large lots.

Q. Do you carry much soap in less than carload lots on your road?

A. Why, I can only answer that in a general way. Sup-

466 pose we carry our fair proportion of soap along with the other——

Q. Most of it isn't carload lots, is it?

A. I would think not, sir.

Q. For any considerable distance?

A. The retail dealer, I think, as a rule buys in less than carload lots. Now what proportion that is of the total I could not tell, I don't know.

Q. You don't know very much about the hauling of soap in less than carload lots, do you?

A. Except that soap just goes in with the general merchandise.

Q. This is a case about soap. We are talking about soap. I want to know from you whether you in your estimates that you have made here have estimated the cost of handling less than carload lots of soap as equal to that of handling the higher class merchandise which you handle in less than carload lots?

A. I have not considered soap specially, no sir. I have not separated that from the balance of the general commodities.

Q. It is much more expensive to handle some characters of light merchandise than it is to handle soap, isn't it?

A. Yes, sir, because we get less quantities, less weight in the car.

Q. Exactly. I would take you—it would be very much

467 more expensive to handle a ton of feathers than it would a ton of soap, wouldn't it?

A. Figuring from one standard, yes. From another, no, it would not cost any more to pull that ton of feathers than it would that ton of soap.

Q. But it would take more space?

A. It would take more space in the car. I say it would not cost any more to pull a ton of feathers, of course, than it would a ton of soap. If we had all feathers it would simply carry out the statement

I have made. It would take a greater number of cars to carry a ton of feathers than it would a ton of soap.

Q. Exactly. And that is where the expense would come in in the handling of a ton of unequal commodities, it would be in the space that it occupied?

A. That is not hardly a fair conclusion in the handling of general merchandise, because we have to move those merchandise cars between given points at regular intervals whether the cars are full, or not. The fact that we show an average of only five and a half tons pretty well illustrates that the cars are not full; and if we are loading a merchandise car from here to Greensburg, Indiana, as an illustration, and making that a regular car each day, we send that car whether it has got much or little in it; and it don't make very much difference whether it is soap or feathers, if there is plenty of

468 room in there.

Q. I thought that you attributed the great expense of handling less than carload lots of high grade merchandise to be due to the fact that it occupied and required so much more space in your equipment in less than carload lots?

A. That's a fact.

Q. Therefore, I ask you as to the difference between feathers and soap, as illustrating the proposition that you announced, that it required more expense according to your views to handle a ton of feathers than a ton of soap in less than carload lots; and it was based upon your statement that the cost was augmented by the amount of space occupied by the shipment?

A. I believe I didn't say that; but I think that is a fact, sir. That is one of the elements that increases the cost of handling less than carload freight as compared with carload freight. The other element is, that we cannot always get full carloads. It has got to go, whether we have the tonnage, or whether we have not got the tonnage. That is not the fact with carload freight; there are regular minmums established for carload freights, and the car don't go unless it has got that much in it. That is not the fact with less than carloads. It goes with whatever we have got.

Q. You manage to, or attempt to, fill your cars though, don't you, whenever you can?

469 A. Why we fill them whenever we can, but I think I am perfectly safe in saying that there is not one-third of the merchandise carried that the cars are full, because we don't have the stuff to fill them.

Q. Do you make any distinction between what you call merchandise shipments, and soap?

A. In less than carloads, no sir, it is called merchandise.

Q. When you have spoken during your examination of merchandise less than carload lots, you have meant that to cover soap??

A. Yes, sir.

Q. Mr. Van Winkle, you don't ship on your road a car in which there is a shipment of soap of light quality of freight at anything like five and a half tons to the car, do you; but isn't the average brought

down to five and a half tons by the enormous amount of other ch
acter of merchandise which is very light in bulk?

A. No, sir, I don't think so. The small average tonnage per car
merchandise cars is brought about by the necessity for prompt
liveries.

Q. You don't understand my question at all. Let me state it
little more clearly. Is not the average which you speak of, five a
one-half tons to the car in less than carload lots of merchand
brought down to that low figure of five and one-half tons
470 car by the fact that you have averaged very light merchand
shipments along with heavy low grade less than carload m
chandise shipments, such as soap?

A. No, sir, I think not. I will start out the same as I did befo
the light loads are brought about by reason of making what you
straight cars from the large distributing points to the destinati
I will illustrate again by Greensburg. We load a car from Cinc
nati to Greensburg, we will say, every day, for two reasons; first,—

Q. I don't care for that. You have answered my question. I h
no objection to it.

Mr. COLSTON: He is answering your question.

The WITNESS: We load that special car for two reasons; first,
expedite the movement of the freight, and second, to avoid ex
handling. Now we send that car to Greensburg if it is only a qu
ter full without any reference to the tonnage. We send it a
whether it is made up of soap or sugar, or all that kind of thing,
whether it is made up of feathers, or at light load; and the sm
average load per car is because of making individual cars from
distributing points to all the surrounding territory.

Q. If you had enough freight for a car to make up a car of l
than carload lots; I mean, if you had sufficient soap to fill a car or
load a car, but it was consigned to different parties from C
471 cinnati to Chicago, you would not load that car with f
and a half tons of soap, would you, to start it on its way?

A. Not if we had enough to make a full carload, certainly wo
not.

Q. Exactly. If you had enough soap and commodities of l
weight and quantity to fill a car, you would not start that car w
five and a talf tons, would you?

A. We would fill every car to its maximum.

Q. Exactly. Now I want to know if in the average that you sp
of, what is the character of freight that brings the average up
five and a half tons; why don't it go down to three tons? W
character of freight gets it up to five and one-half tons?

A. It is not the character, it is the quantity.

Q. Isn't soap a great deal heavier than ordinary merchandise?

A. Yes, but if we have only one box of soap, that's all we h
got.

Q. I understand that, but you load in the soap and bring up
average, don't you? Isn't there a good deal of merchandise t
would not bring it up to five and a half tons to a car?

A. Why yes, there are such commodities, but we don't genera

get all of that class of freight for one day or for one car; we
472 have a general mixture of everything.

Q. I understand that perfectly, of course, but the point I make, there are characters of freight of which you cannot get five and a half tons in a car, are there not?

A. Yes, sir.

Q. And there are characters of freight that you can get immensely more than five and a half tons in a car?

A. Yes, sir.

Q. And the average of those that you generally put into a car you say brings it up to five and a half tons per car of less than carload lots; isn't that so?

A. No sir.

Q. Then your average that you have spoken of, of five and a half tons to a car of l. c. l. freight, how do you arrive at that if you don't take the freight of which the bulk is large and the weight little, together with freight of which the bulk is small and the weight high?

A. The only answer I can make to that question is that we do not have enough tonnage in some instances, and enough bulk in other instances, to make a greater average weight. I really don't know how to answer that in any other way.

Q. Well, tell me how you get at that five and a half tons as the average weight of l. c. l. shipments?

A. By taking the actual weight unloaded from cars and loaded into cars at several of our largest shipping and transfer sta-
473 tions as a basis.

Q. Does not that thing give you the average of all characters of shipments of l. c. l. lots?

A. Yes, sir, that is what I have given you.

Q. Doesn't it then strike an average, or have you not undertaken to strike an average of what you put into a car between the character of freight that is large in bulk and little in weight, and freight which is small in bulk but great in weight?

A. Yes sir; we have made that average including all kinds of freight, heavy and light, bulky and compact.

Mr. MAXWELL: Just as it is actually offered and carried day by day, that's what I understand, in the course of business.

Q. That's what I am trying to get him to say, that a shipment of soap and feathers if put in the same car, he would strike an average.

A. That is the first thing I said.

Q. I didn't understand you to have said anything other than that, but you evidently do not understand me, and I think it is as much my fault as it is yours. I do not blame you for it. I think it is just as much my fault, and probably more, the way the questions were put. Now, Mr. Van Winkle, do you mean to say that the l. c. l. shipments which are carried by your road are less profitable than carload freight?

474 Mr. MAXWELL: We have not examined the witness on that subject. We have confined our examination to the relative cost of transporting the two classes of freight aside from the cost of

depot and transfer handling. I therefore object to the question as not proper cross examination.

The WITNESS: I don't think I can answer the question. I think that before I could answer the question intelligently I would have to figure that out. That is a big proposition to sit down and figure that all out, and to make a basis to work on. I would say offhand that I would think that the general merchandise business was not as profitable as the carload business.

Q. You would think so?

A. Yes, sir.

Q. What would you base that on?

A. On the fact that we may have a great many cars containing merchandise, with a comparatively small load and comparatively small earnings. We don't do that with carload freight, we get a carload before we move the car. It is a known quantity of merchandise, not an unknown quantity. It is not one thing one day and something else the next day. I haven't any figures now to support my opinion.

Q. Don't you move a large amount of carload business that the rate is very small upon?

475 A. Yes, sir.

Q. Would not the average be to make the l. c. l. business much more profitable than the c. l. business?

A. I would think not, sir, for the service performed and the expense attending the movement of both commodities.

Q. Have you had on your road any question about gathering by agency of less than car-load shipments into such quantity as to make up a car, and then shipping it by car-load and distributing it, having it consigned to the agency and there distributed by them at point of destination?

(Objected to by Mr. Maxwell, as irrelevant.)

A. I cannot answer it any way, because I don't know; not to my knowledge we have not any of that.

Q. You have not heard of that on your road?

A. No, sir.

Q. The evidence that you have given to-day in chief was not directed particularly to the cost of handling soap as a commodity, but referred to the general traffic of your road both in car-load lots and l. c. l. lots?

A. Yes, sir.

Q. It would, therefore, what you have said, would have just as much application to a question on the classification of pig iron as it would soap, would it not?

A. Yes, sir, soap as not specially considered in my answers.

476 Q. And there was nothing in which you said which would apply any more to a shipment of soap than it would to any other commodity shipped on your road?

A. No, sir.

Q. You have local trains for local transportation of freight all along your road such as merchandise, have you not?

A. Yes, sir, for the smaller receiving stations we have probably covering a certain territory, and all of that territory in one car, to be unloaded by the train crew.

Q. At different points along as you drop it?

A. At different points; that in the latter day of railroading covers a comparatively small amount of the general merchandise, very small amount.

Q. That is not run, the small merchandise——

A. No, but it is worse.

Q. I have no doubt it is; but it is not run by fast trains?

A. It is not run by fast trains.

Q. You say an empty car weighs eighteen tons?

A. Yes, sir.

Q. What is the capacity of that car,—loading capacity?

A. I guess 18 tons is the average, not individual car.

Q. Then what is the loading capacity of an average car on your line?

477 A. Well, I could not answer that off-hand now, because I made no figures on that; cars are of all kinds and capacities, from twenty to fifty tons.

Q. My dear Sir, how can you get at what the average weight of a car on your line is?

A. By taking a lot of them, taking our records, and getting the weights of them and making an average of them, but I say I did not do that as to the capacity.

Q. You ought to have some idea as to the average loading capacity of a car on your line as General Superintendent of the road?

A. I would say, thirty-five tons.

Q. So that an average car-load then would be fifty-three tons?

Mr. COLSTON: Car and contents.

A. Yes, sir; car-load would be 53 tons, yes, sir. Wait a minute—that is not right; if it was loaded to its capacity it would be fifty-three tons.

Q. That is what I say.

A. Well, I have shown here that the average load now when we are hauling car-load freight, the average load including the weight of the car and the load is forty tons. The average weight of the car loaded with merchandise is twenty-three and a half tons.

Q. A good many of your cars are loaded more than their

478 marked capacity, aren't they?

A. It is permissible as a rule to load all cars ten per cent. above their marked capacity.

Q. You say you took 1,000 gross tons as the average train basis. You mean that 1,000 tons is the average amount of traffic carried by the train?

A. No, sir.

Q. What do you mean?

A. I simply took a thousand tons as a basis to work from, or to make comparisons with, without any reference to what the average train load is.

Q. What is the average train load?

A. Well, I don't think any man on earth can answer that, because that depends entirely upon the conditions. It is one thing one place by reason of the grades; another thing another place by reason of the difference in the capacity of the power, and all that kind of thing. There is not any standard train-load that I know of any place.

Q. Then when you took 1,000 tons as a basis to work on as a train load, you took that basis arbitrarily when there was no possible way of figuring out what was the actual average basis; is that true?

A. Yes, sir, I might just as well have taken one hundred, or I might have taken two thousand. I simply took a unit to work from.

479 Q. Certainly. You say that less than carload lots are shipped by fast trains because the public demands that there shall be fast service?

A. The shipping public, yes, sir.

Q. Is there any difference between the demand of the public for less than car-load shipments of soap and the carload shipments of soap? Doesn't the man who wants a carload of soap want it just as quick as the man who wants less than a carload of soap?

A. I would think not, Sir, generally speaking; the man who gets the box of soap, or a few boxes of soap, is the local dealer, and he probably don't carry a very big supply. The man who gets the car-load of soap is probably the jobber, and he anticipates his wants a little better probably than the small dealer.

Q. That is more matter of speculation?

A. No, sir, it is not matter of speculation; it is a matter that comes up very frequently; the small dealer says, "I am entirely out," and he is after his box harder than the man is after his car-load.

Q. Doesn't the jobber get entirely out too?

A. Possibly. I am dealing with the question generally, not specifically.

Q. When you come down to soap, that is a question you cannot answer, isn't it? Isn't it a fact that you cannot say that

480 the public demands their soap shipped any faster in l. c. l. than in c. l.?

A. No, sir, I cannot answer that. I have stated that I was dealing with general merchandise question not with the soap question.

Redirect examination.

By Mr. MAXWELL:

Q. And dealing with the general question, is it true that the shippers and consignees of what is known as merchandise or l. c. l. shipments, are considered by the railroad companies as entitled to and requiring fast service; whereas the shippers of c. l. lots are considered entitled to and in fact accorded slow service?

Mr. GLASGOW: That is objected to on the ground that it has been gone over in evidence in chief; and further that the form of the question is improper.

A. The demand is greater for the general prompt movement of

l. c. l. business than per car-load business. Now whether the l. c. l. shipper is entitled to a better service or not, I don't know, except that it has become general practice.

Q. I don't mean to ask whether he was entitled to it as a matter of right or matter of law, but whether as a matter of your actual daily practice you do accord the shippers of l. c. l. freight a faster service than to shippers of c. l. freight?

481 (Objected to by Mr. Glasgow on grounds heretofore stated above.)

A. Yes, sir, we make a greater effort and actually move the l. c. l. business with more dispatch than we do the average carload freight.

(By Mr. COLSTON:)

Q. That is a business condition, is it?

(Objected to by Mr. Glasgow.)

A. That is a business condition.

(By Mr. MAXWELL:)

Q. And the extra cost that you put to the shipper for l. c. l. as against the same article c. l. is on account of the extra cost of handling and of transportation and of time; is that true?

(Objected to by Mr. Glasgow, as suggestive, leading, and otherwise improper.)

A. Yes, sir.

Q. Now in the actual conduct of your merchandise or l. c. l. business as it comes to you day by day, is it or not possible to get the cars filled so as to have a general average of more than five and a half tons?

A. Well, I will answer that, no, because if it was possible we would certainly increase the tonnage.

Q. I suppose that the railroads use their best efforts to carry it at as low a cost as possible, and therefore to have the average tonnage as high as possible, don't they?

A. Yes, sir.

Further deponent saith not.

Signature waived by consent.

482 And also, JOSEPH REHKAMP, produced as a witness in behalf of defendants, of lawful age, being first duly cautioned and sworn, deposes and says:—

Direct examination.

By Mr. COLSTON:

Q. State what is your name, age, residence, and what business you are engaged in?

A. Joseph Rehkamp. I am forty years old; live at 1025 Clark Street, Cincinnati; am loading foreman for the B. & O. S. W. Railroad.

Q. Where are you loading foreman for the B. & O. S. W. Ry?
A. In what they call the Mississippi Division.
Q. In what city?
A. At Cincinnati.
Q. Do you load only less than carload freight, or carload freight?
A. I load only less than carloads.
Q. How long have you been foreman of freight loading for the B. & O. S. W. at Cincinnati?
A. Two years and a half.
Q. How many foremen are there loading freight for the B. & O. S. W. at Cincinnati for less than carload lots?
A. I should judge—I really think there are eighteen of us foremen in the B. & O.

483 Q. How many men do you have under you as a rule?
A. I have five men under me.

Q. How as to that loading, you may state briefly how that is done?
A. The loading? As it comes into the house, you mean, off the platform, as we call it. Why, the draymen come there and brings their load and throw it up off into the house. We get the tickets and come out. I go to work and tell the locator to look out what mark I want. He hunts up the cases and puts them on the truck. We run them over the scales; we run them off and put them into the car and stack them away ready for destination.
Q. Does the goods in this l. c. l. traffic have to be assorted at the depot by the locators?
A. Yes, sir; the draymen come there, say he has for instance two lots, and I want a certain mark out of there, I have to pick that package out and run it over the scale and weigh it. If I have a package there for Louisville, Ky., and one for Owensboro, Ky., and another for other points, why I have to get the weight of that certain mark.
Q. What do you have to assort it for?
A. To put the car number on and get the weight of the package, see how much it weighs, for to go up-stairs to be billed.

Q. How do you do about putting them in cars for
484 & 485 particular destinations?

A. We load it on a truck. He goes into the car; say for instance, Louisville, Ky., he takes it into a car we have marked Louisville, stacks it away in the car.
Q. This freight as it comes to the depot in a mass has to be all assorted for particular cars?
A. Yes, sir.
Q. Who keeps the weights that would show how much a car generally holds?
A. Why, as a general rule we are supposed to keep the weights to know how much tonnage there is in a car; otherwise the bill clerk, you know, would have all that weight.
Q. Have you noticed what the weight is that is put into a car in this l. c. l. business as a rule?
A. As a rule, yes, sir, in this business there is cars go out of there with five, six and seven thousand pounds.

Q. What is the general amount of tonnage in those cars as they go out l. c. l. freight?

A. The general amount of tonnage, well, of that l. c. l. business it will run from seven to eight or ten thousand pounds.

Q. State whether the cars are loaded full, or not?

A. No, sir; as a general rule it takes this l. c. l. business takes a whole lot of freight to make fifteen or twenty thousand pounds.

486 Q. The question I want you to confine yourself to is whether as a matter of fact cars are always full, or sometimes part of the space is unoccupied in cars as they go out?

A. As a general rule there is always lots of room in the cars.

Q. Why is that? Why don't you keep the car waiting till you get enough freight to fill it?

A. Why, if we did not haul that freight to-day, the Big Four, or some other road would take that business away from us, and my boss would come down and tell me, "I cannot use you." I have to get this business out.

Q. Do you have to load any particular number of cars a day in that business?

A. Yes, sir.

Q. How many?

A. I load eight cars a day in my division.

Q. For what part of the country do you load those eight cars?

A. I load a car they call the Louisville car, one for the B. & O. S. W. Memphis, and I think a Y. M. & O. car, Memphis transfer, New Orleans and Texarkana, and Los Angeles car; also a car for Paducah, Kentucky.

Q. If a lot of freight comes there from a house here in Cincinnati to be shipped out, and some of the packages go to Louisville, and some to Southwestern points you have mentioned do you

487 have to separate all of that so as to load Louisville stuff into one car, and the stuff for each Southwestern point into another car?

A. Yes, sir.

Q. What classes of freight do you load into a car; all kinds of freight; or do you separate the freight according to its quality?

A. Well, we load all classes of freight just as it comes, we put it into the car. If I have heavy freight, I put it on the car floor in order to get the light freight on top.

Q. Do you handle any soap in this less than carload lots?

A. Yes, sir, I handle soap very nearly every day.

Q. Do you put soap in generally with other merchandise?

A. Oh, yes, sir.

Q. Going to the same point?

A. Yes, sir, if going to the same point put it in with the regular merchandise.

Q. The merchandise that is in a car runs through the whole classification?

A. Yes, sir.

Q. What time does this train for which you load eight cars go out?

A. I think that train leaves Storrs at eight o'clock, or 8:10—I think it is 8:00 o'clock it leaves Storrs.

488 Q. Storrs is the yard limit?

A. Yes, sir.

Q. And whether the car is full, or not, the car is bound to go, isn't it?

A. Yes, sir, car has to go.

Q. How long has that practice been going on, since you have known it?

A. It has been going on as long as I have been in the business. I have been loading foreman for two and a half years. I was locator for a while; then I was trucker when I came there first, got a job as truckman there; that has been somewhere in the neighborhood of a year and a half in that kind of business.

Q. What does this locator do that you spoke about?

A. Locator? I get the tickets; say, for instance, I want five boxes of soap for Mr. Smith, Louisville, Ky. I tell him. There is probably a wagon-load of soap coming from the Globe Soap Company. I had a lot yesterday morning, about twelve lots there. Of course the driver will take and carry it off the wagon, set it down and mix it up again. He has to sort out those marks——

Q. Who does this?

A. Locator.

Q. How do you arrange about loading the freight into a car when the freight consists of several different kinds of freight, and

489 the car is not loaded to its full capacity, that is, the car is quite empty or part empty, how do you arrange to prevent the freight from shaking around in the car in the course of its movement?

A. Well, as a general rule when we start the car we get it up in the hind end of the car. If we see we are not going to have freight enough to fill the car we gradually pile it down, as a mechanic would do his business; then when we are through in the evening we have time to stop, the assistant manager hollers to us and we assist in piling the cars so that they do not get broke in assorting.

Q. Do you weigh the car?

A. I do not actually weigh it myself. The truckman weighs the freight; if there is a big lot I go up to the scale and see what it weighs.

Q. The point I am getting at is this; say that those cars carry out about so many thousand pounds. How do you know that they carry out that number of pounds, or that that is about all that they do carry; what do you know about the weights of your own knowledge?

A. As a general rule we keep the tonnage of those cars, and find the average weight is five or six thousand pounds. There is cars down there that we are not allowed to run over five thousand pounds.

Q. How do you know how much freight goes in the car,

490 do you keep tab on it?

A. If I am busy and should happen to lose the tab, I will

send up to the bill clerk and he can tell how much tonnage I have in the car.

Q. You make it a point to keep yourself informed as to the tonnage there is in each car that goes out?

A. Yes, sir, daily.

Cross-examination.

By Mr. GLASGOW:

Q. You spoke of five, six or seven thousand pounds in a car. You very frequently have them loaded ten to fifteen or twenty thousand pounds, do you not?

A. There is one car that runs that way, the Y. M. & O.; the others don't.

Q. It depends upon the amount of freight you have to handle; if you have the freight, you put it in?

A. Yes, sir, if I have the freight, I put it in.

And further deponent saith not.

Signatures waived by consent.

491 And also CHARLES E. PIERRET, produced as a witness, of lawful age, being first duly cautioned and sworn, deposes and says:—

Direct examination.

By Mr. COLSTON:

Q. State your name, age, residence, and occupation?

A. Charles E. Pierret; age, thirty-two; at the present time Chief Clerk for the General Sup't B. & O. S. W. Ry., located at Cincinnati.

Q. State briefly what railroad experience you have had?

A. I have been connected with the B. & O. S. W. R. R. for the past sixteen years; starting in as clerk in the car record office; and have held a clerkship ever since, going up gradually to the present position.

Q. Do you know whether there is a difference in the mode of handling less than car-load freight and the carload freight in regard to the train service and the schedules, etc. on your road?

A. Yes, sir.

Q. What is it—what makes the difference; what causes the difference?

A. Well, less than car-load merchandise freight is handled on what we term quick dispatch trains. They are scheduled out of terminal at a certain time, and in at a certain time, which schedule is
492 a great deal faster than the trains that handle car-load freight.

Q. Why do you handle that l. c. l. business in this way; what causes you to do that, that you have mentioned?

A. Well, the consignor and consignee are pressing for that in nearly every instance, both demanding faster service and quicker

delivery; and that same demand is brought upon us by reason of competition of other lines.

Q. Does the merchandise service you are speaking about include all classes of merchandise?

A. Yes, sir.

Q. Or only certain kinds of merchandise?

A. No, sir, it includes all classes.

Q. Runs through the entire classification?

A. Yes, sir.

Q. Do you know whether in the matter of movement—I am not speaking now of any cost of handling in the depots,—but in the matter of transportation movement, there is a difference in the cost of movement of l. c. l. business as compared with c. l. business?

A. Yes, sir, there is a difference which is brought about by the reason that in the handling of l. c. l. freight you handle a great many more cars; while in the carload business the number of cars is much less; therefore, you are at an expense, or at a loss, by reason of having a great deal more equipment in service in handling

493 l. c. l. business than you would have if it was all carload business?

Q. In the conduct of this l. c. l. business, I will ask you to state whether it is possible in the way you have to handle it to load cars to their full capacity?

A. No, sir, it is absolutely impossible to load it to the full capacity.

Q. Do you know from observation or experience as to about what part of the car space you can utilize in the l. c. l. business?

A. Well, I don't know that I know just what you mean by "space;" of course, this l. c. l. freight will take up practically all floor space.

Q. I mean the capacity of the car?

A. Well in the capacity of the car the l. c. l. car will contain on a fair general average about one-fourth the tonnage that a car loaded with c. l. freight will contain.

Q. Is that fact due to the composite and mixed character of the freight; or is it due to that and also to the fact that cars are run on schedule and cannot wait till they get enough to occupy the entire room of the car?

Mr. GLASGOW: That is objected to as leading and suggestive.

Mr. COLSTON: I will change it then, if you object to it.

(Objection withdrawn.)

494 A. Well, it is due to both; there is, of course, mixed character of freight; but the cars are scheduled as a daily car, and will run regardless of freight, that is, as to the tonnage or the character.

Q. Suppose that there is not enough to fill the car, then does the car lay over till you get enough to fill it?

A. No, sir.

Q. In the management of your business on the B. & O. S. W. how do you make such shipments with reference to principal points and then the distribution back and forwards from those points; take for

example, Flora, Ills., or Washington, Ind., as an instance; suppose you have a lot of miscellaneous freight to go to either of these points that I have mentioned and then a lot of miscellaneous freight to go to points beyond or this side of those points named, now tell us how that is done. I want it as an illustration and example of how you do the business?

A. Well, we make a Washington car, Washington, Indiana, for instance; that is the Washington car proper; there is no freight put in there except what belongs to consignees at Washington station. That car is put in this quick dispatch train, and upon its arrival at that point is set out. Now there may be freight for local stations either side, or going to a connection out of Washington. Now that freight is loaded and handled to the same station and redistributed from there on what we term a local freight train the following morning so as to make morning delivery.

495 Q. How is it distributed, in separate cars, or——

A. If one car contains freight for both East and West of Washington for local points it is re-handled by platform labor into a car that will start on East-bound local, and that for East-bound local on the East-bound local.

Q. Why don't you ship all that freight as well as that that is intended for Washington, for example, and for stations a certain distance East or West of Washington all in the Washington car, so as to fill that car and save the number of cars on the train?

A. Well, the Washington car that contains Washington freight is immediately taken to the depot platform, and the freight unloaded and delivered to the consignee, while the other car will not be handled in that way; the freight in that car would be handled so as to transfer direct into the local car both East and West, and, therefore, if the freight was put in the same car, the delivery for Washington freight would be delayed, it would make it a little later getting to the consignee.

Q. Is this that you have stated illustrative of the way the business is done over your whole road, whole system, as to this l. c. l. business?

A. Yes, sir.

496 Q. How long has that business been done in this way, for trying to get this quick service?

A. Well, to the best of my knowledge for the past eight or ten years.

Q. And it includes all kinds of merchandise, does it?

A. Yes, sir.

Q. These fast trains that you are speaking about, do they carry much carload freight, or only occasionally that a carload will go in?

A. No, they carry some carload freight, that is perishable freight or live-stock; well, it is very seldom that they have a carload of any other class of freight.

Q. Do you know as a matter of fact whether there is a condition of things that requires this fast service for small dealers that does not exist as to men who deal in bulk and larger quantities, such as carload lots?

A. Well, I don't know that I can give a satisfactory answer eithe to you or for myself on that point.

Q. Well, do you understand what I mean?

A. As to whether the demand is greater on l. c. l. than on ca load——

Q. For quick service?

A. For quick service? Oh, yes, sir, it is.

Q. Does the Traffic Department of your road require that th Transportation Department shall furnish this quick service

497 A. Well, it is not so much required by the Traffic Depart ment as by other conditions which I believe I have mentioned

Q. Do you know about the wages that are paid to the crews in cluding the engineers and firemen that handle this l. c. l. busines and those that handle the c. l. business?

A. Well, the pay is based on the mileage.

Q. In both cases?

A. In both cases.

Q. Do you know whether there is any difference in wages or i the rate per mile that is paid in any of those cases?

A. The rate per mile is the same.

Q. Do you know how generally that is true in regard to the rai roads in this section of the country?

A. That is the basis on which practically all the railroads a working.

Q. Have you made any calculation to determine as to what th difference in cost is in handling the carload business and the le than carload business—the percentage of difference?

A. Well, in a general way, yes, sir, the percentage on l. c. l. bus ness as against c. l. business, it will require about four times th amount of equipment, that is to say, to handle the amount of l. c. tonnage as you would to handle the same amount of c. l. to

498 nage.

Q. Does that include engines, or only the cars?

A. It is just the cars.

Q. Does it include four times as many men, or only just four time as much equipment?

A. No, sir, so far as trains are concerned, the number of men a the same.

Q. The power would be the same to move the two trains would i that you have given?

A. Well, to handle a train of l. c. l. freight that same engi would handle a train of c. l. freight on slower schedule, would handl 30 to 35 per cent. more freight, more revenue freight.

Q. That is by "revenue freight" you mean tonnage?

A. In fact it would handle that much more gross tonnage.

Cross-examination.

By Mr. GLASGOW:

Q. Now let us figure on that. Do you think that it takes fou times the equipment on your road to handle the shipments of soa

that you have in l. c. l. lots that it does to handle c. l. shipments of soap?

A. Let me understand you. If we were to handle, only handle less than carload cars of soap alone, would take four times as many cars as to handle what business we have in carloads?

Q. Yes, sir.

499 A. Well, I cannot say that our soap in less than carload quantities would be worth much.

Q. No, sir. The great bulk of the soap is shipped in carload lots, isn't it?

A. Taking it as a whole.

Q. A very small proportion of the soap that you handle comes in less than carload lots, doesn't it?

A. Well, as I said before, I don't—I am not familiar with just how much soap we handle either carload or less than carload.

Q. But you know as a fact that the larger proportion of the soap which is handled by your road goes in carload, does not it?

A. So far as the total tonnage is concerned?

Q. Yes, sir.

A. I don't know that that proportion would be so much greater than less than carload lots.

Q. You think you handle about the same amount of soap in less than carload lots that you do in carload lots?

A. No, not the same amount. The gross tonnage of carload freight will be greater than the gross tonnage of what we handle as less than carload.

Q. I am talking about soap. Don't you know as a matter of fact that a very large majority in tons of soap handled by your road goes to jobbers in carload lots?

500 A. No, I cannot answer that to be a fact.

Q. You don't know, do you?

A. No, I don't handle that soap, I do not oversee the loading of that soap, I don't how much there is to it.

Q. You say it takes four times the equipment to handle your less than carload business as it does carload business. Now I want to get down to this case with you, and if you don't know, I want you to say so. I want you to tell me whether that average which you struck, that proportion which you have announced, whether that applies to the soap traffic on your road; and if you don't know, I want you to say so.

A. Whether it applies to the soap traffic?

Q. Yes, sir.

A. I don't quite grasp your question.

Q. Does it take four times the equipment to handle soap in less than carload lots on your road as it does to handle soap in carload lots?

A. As I said before, I could not give you——

Q. You cannot answer that.

A. An answer that would—that I would want to——

Q. You cannot then tell us whether it takes as much to handle less than carload shipments of soap as it does carload shipments?

A. Yes, I can.

Q. Do you think it takes just as much equipment to handl
501 less than carload lots as it does carload shipments?

A. As I said before, if we were going to handle that les than carload soap as delivered in that particular car by itself, I be lieve I can safely say that it would take as much, as many cars as i would the carloads.

Q. You think the tonnage is about the same?

A. It would average up a total? No, I don't think that tonnag would.

Q. Do you think there is more tonnage in less than carload lot than in carload lots?

A. No, I think there is more in carload lots.

Q. Much more?

A. Taking a certain period for an average, I don't think it woul amount to very much more.

Q. By the year you don't think it would amount to very muc difference?

A. No, sir.

Q. If you had to furnish just as many cars for your less thar carload shipments of soap as you did for your carload shippers o soap, and the tonnage was not very much different if you get a large rate, greater rate, on the less than carload shipments than you do o carload shipments, you are making more on the less than carloa shipments, are you not?

A. No, I don't think they are.

Q. Let us look at that. You say it takes about the sam
502 amount of cars to handle less than carload shipments that i does carload shipments; you said that, didn't you?

A. I don't recall that was my answer now. I think it will tak more cars to handle less than carload business.

Q. On soap?

A. Yes, sir, take it as it is delivered.

Q. Then to handle your whole tonnage——

A. I don't intend to average that tonnage; but the less than car load lot business will take in less than carload lots as delivered, tak it day by day, it would take a greater number of cars to handle thar if it was carload.

Q. Didn't you just now say that you thought it would take about the same?

A. I think that was in point of tonnage.

Q. No, I was asking about equipment. Didn't you say that you thought it would take about the same amount of equipment to handl your less than car-load shipments of soap if they were handled soap alone as it would to handle your carload shipments of soap?

A. It will take—it will really actually take more cars.

Q. Now let me understand—more cars which way?

A. To handle l. c. l. soap as delivered.

Q. The l. c. l. cars of soap daily take more cars?

A. Yes, sir.

Q. And you think the tonnage about the same?

503 A. The tonnage I would say, yes, would be the same, taking it as a whole.

Q. Well, your rates on less than carloads are much higher?

A. I am not acquainted with the rates.

Q. Don't you know as a fact that on less than carload shipments the rates are much higher than in carload shipments?

A. Yes, I think so.

Q. So that whether it would be more profitable to handle less than carloads or carloads you don't know then?

A. Yes, it would be more profitable if your business was all carloads.

Q. How can you tell me that when you say you don't know what the rates are?

A. Well, regardless of the rate, it would be more profitable.

Q. How can you say regardless of the rate? You have got to know the rate to know the profit, don't you?

A. Yes, got to know the rate to know the profit.

Q. You say you don't know the rate?

A. No, sir, I don't know the rate.

Q. How can you tell what is profitable or what unprofitable——

A. Because there is less expense in connection with the hauling.

504 Q. You have to know the rate as well as the expense in order to know whether it is profitable?

A. Yes, sir.

Q. If you don't know the rate, how can you say it is profitable, or unprofitable?

A. We are able to arrive at expense.

Q. You have to know the rate as well as the expense, don't you?

A. No, not in the transportation department.

Q. How can you tell whether the thing is profitable if you don't know the rate at which you are going to carry it?

A. The Traffic Department takes care of rates.

Q. If you don't know what the rate is that you are getting for carrying certain merchandise, how can you tell whether it is profitable, or unprofitable?

A. When I say I don't know what the rate is, I don't know what the rate is on this particular commodity.

Q. Well, we are talking about soap. I want to know then whether it is more profitable to carry soap in less than carloads or carloads on your road, where you say the tonnage is about the same in both, and where you say that the equipment for less than carloads is a little more?

A. The profit would be in the carload business.

Q. How do you know?

A. Because we would have a less number of cars for one

505 thing, and we would have thereby a less amount of expense in connection with those cars.

Q. Put it down then here that you would first, have a less number of cars——

A. Yes, sir.

Q. Then, less expense?

A. We would have less expense by reason of the less number of cars.

Q. Now what is the rate?

A. As I said before, I have not got the rate on soap.

Q. Will you please explain to me how you can say whether it is profitable or unprofitable if you don't know at what you are going to carry it?

A. Yes, I can say that it is more profitable, as I have stated it — because our expense is less; just what the difference is in the rate does not come in the Transportation Department. I don't know whether less than carload freight is what percentage it is carried, if any, than carload.

Q. You know it don't cost you as much to handle carload freight as it does less than carload freight; is that what you know?

A. Yes, sir.

Q. So you think the expense of handling carload freight is less than the expense of handling less than carload freight?

506 A. Well, just where you are going to divide that expense— the expense on the road in handling that freight is less by reason of our having—well, the expense on the road actually is not less; that is, so far as I have answered before, the trainmen and engineers' wages.

Q. You have got the expense less for handling carload business. Now when it comes to what you get for handling it, you don't know, do you?

A. No, sir.

Q. So that whether there is more profit in one than in the other you don't know, do you?

A. No, sir.

Redirect examination.

By Mr. COLSTON:

Q. You don't know what the tonnage of soap handled in less than carload lots is, do you?

A. No, sir.

Q. Do you know what tonnage of soap in carloads lots is?

A. No, sir.

Q. When speaking about its being cheaper to carry soap or anything else in carload lots than in less than carload lots you are speaking from general knowledge on the subject, are you not?

A. General knowledge from the fact that we have less expense in being able to utilize those cars than it would take us to handle less than carload lots.

507 Q. But how much difference in point of profit there is between the two kinds of traffic, you don't undertake to say, and don't know?

A. No, sir.

Q. In hauling your less than car-load lots, for example take soap,

take that car just as an illustration, to Washington, Indiana, if there came to the depot on any particular day freight for Washington, Indiana, and it consisted of nothing but soap, then that car would go, wouldn't it, with nothing but soap in it?

A. Yes, sir.

Q. Suppose there wasn't enough soap to fill that car, then all the rest of the capacity of the car would be lost, wouldn't it on that traffic?

A. Yes, sir, that car would have to run if there was only that one box of soap.

Q. And might go all the way to Washington, Indiana, with one box of soap; is that so?

A. Yes, sir.

Q. And that illustrates the less than carload business so far as soap is concerned, as well as so far as anything else is concerned?

A. Yes, sir.

Recross-examination by Mr. GLASGOW:

508 Q. Did you ever know a car to run with a box of soap in it?

A. Have I ever seen it? No, sir.

Q. You would put that box of soap in some other car, I am sure?

A. No, sir.

Q. You would not ship but one?

A. If it was put in the car, if it was a special daily merchandise car, it would have to go.

Q. Have you ever known a car to run from Cincinnati to Washington, Ind., with a box of soap in it?

A. No, sir.

Q. That is an illustration that has never occurred?

A. It has never come up to my knowledge.

Q. You would not put on a car to Washington, Indiana, unless there was enough traffic to justify it, would you?

A. Why, there are a number of cars run where the traffic does not justify it.

Q. Why do you run them?

A. Competition.

Q. You make it some other way then, don't you, make your money some other way then, don't you?

A. Well, we hope so.

By Mr. COLSTON:

Q. You don't know whether they do, or not?

A. I don't.

509 (By Mr. GLASGOW:)

Q. But unless the needs of traffic require it, your road don't run trains, do they?

A. Unless traffic requires it? Well, in one way, no.

Q. You don't run them for the fun of it?

A. No, sir.

Further re-direct examination.

By Mr. COLSTON:

Q. Do you mean to say that in this l. c. l. business that the car don't run out of Cincinnati unless you have got a certain quantity of freight to go in it?

A. No, sir.

Q. Did you say that the car would not run out unless there was enough freight to justify it to take this car to Washington, Ind.?

A. No, I didn't mean to convey that impression that we would not run it unless there was enough to justify it.

Q. What is the actual condition of things under which you do that l. c. l. business; take for example, Washington, Indiana?

A. We have to put on a Washington, Ind., car. There is no minimum or maximum, but the car has to be run regardless of the amount of freight that goes down there for it.

Q. That is the condition under which you operate, is it?

A. Yes, sir.

Q. It may be more, or less, in that car?

510 A. Yes, sir.

Q. What is the average of all of that l. c. l. tonnage? per car?

A. Well, a very fair and liberal tonnage would be between five and six tons per car.

Further recross-examination.

By Mr. GLASGOW:

Q. You have worked that out, have you?

A. Yes, sir.

Q. I understand you that you have established a freight line, one car per day, between Cincinnati and Washington, Ind.?

A. Yes, sir.

Q. The reason that you did that was that sufficient freight was to be handled between Cincinnati and Washington, Ind., to justify shipping one car or carrying or moving one car from Cincinnati to Washington every 24 hours; is that true?

A. Well, no, not exactly. That freight may, of course, increase as time goes on and it is known that there is a scheduled car in there; but all cars when put on there is not sufficient tonnage or revenue to justify.

(By Mr. COLSTON:)

Q. You have to work up business; is that true?

A. Yes, sir.

(By Mr. GLASGOW:)

Q. You don't put them on unless you expect to work up a

511 business?

A. That is generally the expectation.

And further deponent saith not.

Signature of witness waived by consent.

512 STATE OF OHIO, *Hamilton County, ss:*

I, Joseph L. Lackner, a notary public in and for said county and state, duly commissioned and qualified, do hereby certify that the above named J. Q. Van Winkle, Joseph Rehkamp, and Charles E. Pierret, were by me severally sworn to testify the truth, the whole truth and nothing but the truth before giving their foregoing depositions; that said depositions were, by consent of counsel, taken down in shorthand by Douglas A. Brown, a disinterested person, in my presence and in the presence of the witnesses respectively, and were afterwards reduced to typewriting by him; that the signatures of the witnesses thereto were waived by consent of counsel; that said depositions were duly taken pursuant to and at the time and place and within the hours specified in the notice hereto attached; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this case, and was at the time said depositions were taken a notary public in and for said county and state.

I further certify that the charge for said depositions, $22.20, is just and reasonable, and has been paid to me by the defendants.

[SEAL.] JOSEPH L. LACKNER,
Notary Public, Hamilton County, Ohio.

My commission expires Jan. 10, 1906.

513 And afterwards, to-wit: but on the same day, an Entry was made upon the Journal of said Court in said cause, which Entry is clothed in the words and figures following to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
THE C., H. & D. R. R. CO. ET AL., Defendants.

On application of the United States Attorney to the Court to fix a limited time in which to take the testimony in the above entitled cause, and the Court being fully advised in the premises orders that all oral testimony to be used in the trial of the above entitled cause shall be taken and filed with the Clerk of this Court on or before sixty days from this date.

514 And afterwards, to-wit on the 30th. day of October, A. D. 1905, came the Complainant by its Solicitor and filed in the Clerk's Office of the Court aforesaid, a certain Statement in said cause which Statement is clothed in the words and figures following to-wit:

514a *Official Classification No. 20, Effective January 1, 1900.*

Articles Taking L. C. L. (4) and C. L. (5).

1. Acetate of Lime
2. Actinolite Ore
3. Aluminal
4. Anchors, (iron) N. O. S.
5. " building, wrought iron
6. Anvils, iron
7. Argols
8. Armor Plate, (iron or steel)
9. Asbestos Ore
10. Ashes (pearl or pot)
11. Axles (car or locomotive)
12. " (iron or steel) N. O. S.
13. Babbitt Metal
14. Band Iron
15. Barb Wire
16. Barium (Chloride of)
17. Bath Brick
18. Beans, N. O. S.
19. Binding, wire or wire ties
20. Bisulphide of Lime
21. " of soda
22. Black Lead
23. Blue Vitr-ol
24. Boiler Flues or Plates (iron)
25. " Iron
26. Bolts (iron)
27.
28. Box Straps (iron, steel or wire)
29. Braces, extension (iron or steel)
30. Brackets (telegraph)
31. Brake Beams (Iron)
32. Brake Shafts of Rods
33. Brake Shoes (Iron)
34. Brake Shoe Slugs (iron or steel)
35. Brick (Enameled Glazed)
36. Brick (Stove Lining)
37. Bridge Material (wooden)
38. Bumpers (iron)
39. Bumping Posts (R. R.)
40. Candle Tar
41. Carbide of Silicon
42. Carboy Stoppers (Clay)
43. Car Bolster bearings
44. Car Bolster Caps (Iron or Steel)
45. Car Couplers (Automatic)
46. Car Coupler Knuckles

47. Car Journal Boxes & Covers.
48. Car Spring Plates
49. Car Wheels (Paper or Iron)
50. Castings (Locomotive Cylinder)
51. Cattle Guards (Iron)
52. Caustic Potash
53. Center Plates (Car)
54. Coal Tar
55. Coke Tar
56. Conduits (Electric Insulating Iron)
57. " (Cemented)
58. " (Terra Cotta)
59. " (Clay)

514*b*

60. Cores (iron)
61. Corner Irons (Car)
62. Crestings (Galvanized Iron) Packed Flat
63. " (Iron in boxes or barrels)
64. Drilling Compounds
65. Dross (Tin)
66. Elbow Joints (Iron or Steel)
67. Fence Posts (Sheet Iron)
68. Ferro Manganese
69. Fire Kindlers
70. Fire Plugs (Iron)
71. Fish, (pickled or Salted) N. O. S.
72. Flanges (Wheel, Iron)
73. Fleshings
74. Flues (Iron)
75. Foots, (Molasses, Oil)
76. Frogs, (R. R. Iron)
77. Furniture Stain
78. Galvanized Iron
79. Gas Pipe, (Iron)
80. Gas Pipe Hooks, (Iron)
81. Gas Retorts, (Iron)
82. Gas Tar
83. Glucose
84. Glue, Stock or Scrap
85. Grape Sugar
86. Graphite or Graphite Ore
88. Hangers (Timber)
89. Hasps (Iron or Steel)
90. Hasp Hooks (Iron or Steel)
91. Hasps with hooks (Iron or Steel)
92. Hay Bands
93. Hides, viz: Calf Skins (Green)
94. " Hide Pates or Scraps
95. " Hog Skins (Green)
96. Horse Shoe Nails

97. Horse, Mule or Ox Shoes
98. Hyposulphide of Soda
99. Ingot Mould Staples (Iron or Steel)
100. Insulator Pins (telegraph)
101. Iron and Steel, viz: Billetts, Blooms, Ingots, (NOS)
102. Angle Iron
103. Black Plate
104. Bolts (bridge or barge) 12 inches and over
105. Bolts, Nuts, Rivets, Staples or Washers (Iron)
106. Bridge Iron
107. Castings (Iron NOS, 15 lbs. and over)
108. (same securely wired in bundles)
109. Castings (Iron NOS, boxes or barrels)
110. Ceiling (Iron)
111. Ceiling Mouldings (Iron)
112. Chain or Chain cable (Iron, loose)
113. Chain Sprocket
114. Chain (Belting)
115. Chairs (R. R.)
116. Chain Iron
117. Corrugated Sheet Iron
118. Cotton Ties
119. Cotton Tie Buckles
120. Crow Bars
121. Draw Bars
122. Draw heads

514c

123. Iron & Steel Articles, Fence Posts (Cast Iron)
124. Fish Plates (R. R.)
125. Forgings (Iron)
126. Forgings (Carriage)
127. Fronts (Architectural)
128. Hoop Iron
129. Lathing (Iron or Steel)
130. Links & Pins
131. Lintels
132. Locomotive Wheels & Tires
133. Nail Plate
134. Nails or Spikes
135. Nut Locks
136. Picket Pins
137. Picket Points
138. Pipe (Cast Iron)
139. Pipe (Wrought Iron)
140. Pipe Balls
141. Pipe Fittings
142. Planished Sheet Iron
143. Plate (Iron or Steel) U. S. Standard Guage
144. Plates (Architectural)
145. Pole Caps

146. Pole Steps
147. Splices, switches & Switch Stands
148. Rail Brace
149. Roofing (Iron)
150. Sash Weights (Packed)
151. Shafting
152. Sheet Bars
153. Sheet Iron & Steel
154. Shingle Bands
155. Shovel Blanks
156. Shutters
157. Single Tree or Double Tree Irons (Unfinished, packed)
158. Sinks (Nested)
159. Skelp Iron
160. Skelp Steel
161. Spiegel Iron & Eisen
162. Spools (Paper, Iron) Empty
163. Spring Cotters or Spring Keys
164. Stairs or Stair Work
165. Stake Pockets (Car)
166. Stand Pipes
167. Staples (Iron Galvanized)
168. Staples (Wire in kegs)
169. Steel (in boxes or barrels)
170. Steel (in Bundles Plates or Slabs)
171. Stop Cock Boxes
172. Tack Plate
173. Taggers Iron
174. Tamping Bars
175. Tank Iron
176. Tie Plates (R. R.)
177. Timber Hangers or Stirrup Irons
178. Tin Plate Bars
179. Toe Calks
180. Tubing (In Rough)
181. Turn Buckles

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182. Iron & Steel Articles Tuyers
183. Water Pipe
184. Wedges
185. Weights (Beds)
186. Weights (for hoisting elevators)
187. Wire (Fence)
188. Wire (Iron Packed)
189. Wire (Iron in bundles or coils)
190. Wire (Iron Galvanized)
191. Wire (Mattress)
192. Wire (Steel) in boxes, bundles or coils
193. Wire (Steel in barrels or casks)
194. Wire (telegraph)
195. Wire Rods

196. Journal Boxes and covers.
197. Jute or Jute Lashes
198. Jute Butts
199. Kindlers (Fire)
200. Lag Screw Bolts
201. Lag Screw
202. Lead (Nitrate of)
203. Lead (Sublim-ed)
204. Lead (Sugar of)
205. Lead (Sulphate of)
206. Lentils
207. Litha-ge
208. Manganses
209. Manilla or Sisal
210. Mill Stones
211. Molasses
212. Mortor Stains or colors
213. Nitrate of Soda
214. Paints (Dry, NOS, Kegs, Half-Barrels or Barrel)
215. Paints (In Oils, NOS, kegs, Half-Barrels or Barrels)
216. Paints (Asbestos, Asphalt, Chemical, Lead, Para-fine, Rubber Zinc, Zinc Oxide, in wood.
217. Paints, Dry
218. Paints, Earth, Iron, Metallic Mineral, Oil in wood
219. " Dry
220. Peas, (dried)
221. Peas (Split)
222. Pea Hulls
223. Pipe (Stove, Sheet Iron)
224. Pitch (NOS)
225. Plumbago, in barrels or casks
226 " facings (in barrels or casks)
227. Portable Railway Tracks
228. Potash, NOS, in barrels and casks
229. Potash, (Caustic in Iron Drums)
230. Powder, Keg Heads, Bottoms & Stoppers (Sheet Iron)
231. Putty (in bulk)
232. Railroad Tie Plugs (Wooden)
233. Rail Joints
234. Roofing (Tin)
235. Roofing (NOS)
236. Roofing, composition
237. Rubber, scrap
238. Salt Petre
239. Smalts (Painters)
240. Sodium, Sulphate of

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241. Spring Bed Ties, (Wire)
242. Stove Putty or Cement
243. Sulphate of Iron

244. Syrup (NOS) in wood
245. Tacks, iron or steel, in boxes, kegs or barrels
246. Same, in wooden boxes packed in cases
247. Tacks, Wire, in kegs or barrels
248. Tar, NOS in barrels
249. Terre Cotta, for building
250. Tin Plate NOS
251. Ultra Marine Blue
252. Potatoes & Sweet Potatoes
253. Vehicles, viz:
254. Axles, (iron or steel NOS)
255. Bicycle Forks (iron or steel, in rough)
256. Thimble Skeins, iron
256. Tires (Carriage or Wagon, iron or steel)
257. Wall Finish, NOS
258. Wood Filler (in kegs, half barrels or barrels)
259. Woods of Value, (Logs)

[Endorsed:] No. 5897. United States Circuit Court, Southern District of Ohio, Western Division. The Interstate Commerce Commission, *vs.* The C. H. & D. Railway Co., *et al.* Statement.

515 And afterwards, to-wit: on the 2nd. day of November A. D. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, in this cause the Testimony of John M. Macdonald *et al.* in the case of The Procter & Gamble Company *vs.* The Cincinnati Hamilton & Dayton Railway Company, *et al.* taken in June 1900, which Testimo-y is clothed in the words and figures following to-wit:

516 Before the Interstate Commerce Commission.

THE PROCTER & GAMBLE COMPANY
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

Hearing at Washington, D. C., June 20, 21, 22, 23, 25, 26, 27, 28 and 29, 1900.

Present: Commissioners Knapp (Chairman), Clements, Yeomans and Fifer.

Appearances.

John W. Warrington and Mortimer Matthews for Complainant.
Lawrence Maxwell for Penna. R. R. Co.; P., C. C. & St. L. Ry Co., and C. H. & D. R. R. Co
Edward Colston for B. & O. S. W. Ry. Co.
O. S. Bayless, for N. Y. C. & H. R. R. R. Co., L. S. & M. S. Ry. Co., and C. C. C. & St. L. Ry. Co.
J. J. McAuliffe and J. H. Fishback, Stenographers, Washington, D. C.

517–560 WASHINGTON, D. C., *June* 20, 1900—10:30 a. m.

The CHAIRMAN: Gentlemen please give us your attention. The Commission is prepared to take up the case of Procter & Gamble Company *et al.* Mr. Warrington, you may proceed.

* * * * * * *

561 After Recess.

The CHAIRMAN: You may proceed, Mr. Warrington.

Mr. WARRINGTON: Yes sir.

Mr. MATTHEWS: May we have the use of the record to read our depositions?

The CHAIRMAN: Certainly.

The depositions of Bradley M. Delemater, Charles A. Jennings, Carl A. Lautz, of Buffalo and John Hoge were read. These depositions are on file in the record, that of Mr. Delemater at page 3 of the depositions, that of Mr. Jennings at page 24, that of Mr. Lautz at page 36 and that of Mr. Hoge at page 2.

During the reading of the deposition of Mr. Delemater, after an objection by Mr. Matthews (page 13 of depositions) the following remarks were made:

Mr. WARRINGTON: There is a motion which we will not ask you to pass upon now. We would ask you, however, to reserve objections that are made upon this branch until we reach a further stage of the case. We think it will be presented in a way then when a witness comes upon the stand which, taken in connection with the depositions, will give you a better idea of our conception of what is and what is not relevant to this investigation, and in asking that
562 this be passed in this way it is to advise you that at some stage of this proceeding we shall ask your indulgence to be heard on that particular question.

The CHAIRMAN: Very well.

Mr. MAXWELL: I will observe that in this case they took this gentleman's deposition to prove the profits of the business. Our cross-examination develops the fact that they made 10 per cent. and accumulated a reserve of 400 per cent.

During the reading of the deposition of Mr. Carl A. Lautz, after an objection by counsel for complainant, the following remarks were made:

Mr. WARRINGTON: Here is another objection which we ask to be received to be considered later. This is one we note particularly.

The CHAIRMAN: Your side will not be at all prejudiced by the fact that the whole deposition is read now.

At 5 o'clock P. M., the reading of the depositions of the gentlemen above named being concluded, the Commission adjourned until 10 o'clock A. M., June 21, 1900.

563 Second Day.

WASHINGTON, D. C., *June* 21, 1900—a. m.

The CHAIRMAN: You may proceed, Mr. Warrington.

Mr. WARRINGTON: I will ask Mr. Macdonald to take the stand.

JOHN MACDONALD, a witness called on behalf of complainant, being duly sworn, testified as follows:

Mr. WARRINGTON: Mr. Macdonald, what is your full name?

Mr. MACDONALD: John M. Macdonald.

Mr. WARRINGTON: Where is your home?

Mr. MACDONALD: In Cincinnati, Ohio.

Mr. WARRINGTON: What, if any, connection have you with the Procter & Gamble Company?

Mr. MACDONALD: I am in their employ as Manager of their Transportation Department.

Mr. WARRINGTON: Are you so now?

Mr. MACDONALD: I am so now.

564 Mr. WARRINGTON: How long has that continued?

Mr. MACDONALD: Since 1885.

Mr. WARRINGTON: In the same capacity?

Mr. MACDONALD: In the same capacity since 1890, but in the freight department, in the freight work, all the time.

Mr. WARRINGTON: Be a little more specific, please. What does that signify? What familiarity does it give one with freight matters?

Mr. MACDONALD: I have charge of all of their freight coming in, the payment of the charges on that, the routing, and figuring of freight on all the shipments out. This will be better understood in regard to our outbound business when it is understood that we repay all our freight; so it is necessary for us to figure the freight to every point to which we ship.

Mr. WARRINGTON: What is the extent of territory over which you have to extend your investigations, and in that connection state how far the business of the Procter & Gamble Company extends in a territorial sense?

Mr. MACDONALD: We do business in practically all parts of the United States. We do some business in England.

565 Mr. WARRINGTON: Do you know the roads—that is, the railway companies—parties to this cause by name?

Mr. MACDONALD: I do.

Mr. WARRINGTON: What have you to say of your company sending freight and receiving freight on those lines, or any of them?

Mr. MACDONALD: We receive and ship freight over all of them.

Mr. WARRINGTON: How long has that been so to your knowledge?

Mr. MACDONALD: Ever since I have been in the employ of the company.

Mr. WARRINGTON: Before pursuing this further, I wish to ask you whether your experience with the company ever reached the Sales Department and, if so, describe what you did in that regard.

Mr. MACDONALD: For the past two and a half years, up to June 1st, I was assistant sales manager in particular charge of the retail salesmen in addition to my duties in the transportation department. The 1st of June I gave up this position to take charge of a new position in our department in which we expect to refine cotton
566 seed oil, though I will not give up my position in the transportation department.

Mr. WARRINGTON: Describe briefly the nature and volume of the Procter & Gamble Company business in so far as it reaches the common carriers. First, what is its business?

Mr. MACDONALD: We manufacture soap, candles, glycerine, ste-ris acid, red oil, and have just become refiners of cotton seed oil.

Mr. WARRINGTON: Of these I only feel it incumbent for you to describe two of the features. What is ste-ric acid?

Mr. MACDONALD: Ste-ric acid might be called unmanufactured candle stock—the candle stock before it is molded into candles.

Mr. WARRINGTON: What are red oils?

Mr. MACDONALD: Red oils are oils which are secured by pressing this stock, to make this candle stock. For instance, we press the stock once and get single pressed ste-ric acid and single pressed oil.

Mr. WARRINGTON: What is the stock which is so pressed? What do you mean by "stock"?

Mr. MACDONALD: Tallow.

Mr. WARRINGTON: What is the tonnage or volume per annum of the business which your company does over these railroads?

567 Mr. MACDONALD: I will look at this memorandum, as I would like to give these figures exactly. During 1899 we received 5,799 loaded cars and delivered 4,684, or a total of 10,483 loaded cars.

The CHAIRMAN: That statement is limited to the roads named as defendants in this proceeding, is it? The question was so limited; or is that your whole business?

Mr. MACDONALD: That is the whole business.

Commissioner CLEMENTS: But it all goes over these roads?

Mr. MACDONALD: Yes, sir; it must go over these roads, although it would in some cases be a switching movement to Cincinnati.

Mr. WARRINGTON: But is it not true that these cars all pass over the roads of defendants?

Mr. MACDONALD: Yes, sir.

Mr. BAYLESS: Does this include the Southern business—the L. & N., or southern roads?

Mr. MACDONALD: I made that statement very clear. On our Southern business, it must pass over one of these carriers to get to the southern lines.

Mr. WARRINGTON: I am not at this moment describing the
568 mileage that would be involved on these roads. I am only attempting to describe what goes over one or the other of these roads.

The CHAIRMAN: It is all delivered to one of the roads named here as defendants?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: How is it with the freight received? Is it so large in comparison with the output? In that connection tell us whether there is a double haul in your business and why.

Mr. MACDONALD: There is a double haul of course. We bring our raw materials from all over the country; we bring the stuff to Ivorydale and manufacture it. There is a large percentage of water in the soap. Then we distribute it to these same points from which we have drawn the raw materials. The discrepancy between the loads in and loads out is caused somewhat by the coal.

The CHAIRMAN: And the balance by the waste?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: Can you tell us what part of this volume of traffic is embraced in what I shall call for convenience your competitive soaps for the moment?

—. I did not understand the question.

569 Mr. WARRINGTON: Will the stenographer please repeat the question.

The question was repeated.

Mr. MACDONALD: A very large portion of it is in our competitive soaps.

Mr. WARRINGTON: What are your competitive soaps?

Mr. MACDONALD: The yellow laundry soaps. For instance, to make that clear to you, all leading manufacturers now make what we call a standard twelve-ounce brand. Ours we call "Lenox;" Schultze & Co. make a brand called "Star;" the Central City Soap Co. of Jackson Michigan a brand called "Jackson;" Fairbanks & Co. a brand called "Santa Claus." These soaps are very similar in quality and compete with each other all over Central territory.

Mr. WARRINGTON: Have you, or not, more than one brand of that class of soap?

Mr. MACDONALD: We show on our price list I suppose about twenty or twenty-five such brands.

Mr. WARRINGTON: How many of them do you manufacture?

Mr. MACDONALD: We manufacture all of them, the Lenox being the most generally sold. The other soaps are more confined

570 to some particular locality. The Lenox Soap I might say is sold in every State in the United States, sold all over the country.

Mr. WARRINGTON: What other brand of soap do you make—I mean other than those you have described.

Mr. MACDONALD: We make the Ivory Soap.

Mr. WARRINGTON: Describe that.

Mr. MACDONALD: The Ivory soap is a white soap, a white laundry soap; made by laundry soap processes, but on account of its great excellence and purity it has been sought by many people for toilet and bath purposes. Its large use we think, however, is for general household purposes—a high class laundry soap.

Mr. WARRINGTON: Do you make any other kind of soaps? For instance, do you make toilet soaps?

Mr. MACDONALD: We are not toilet soap manufacturers. It is

a different business entirely from the laundry soap business, and we have never been in the toilet soap business.

Mr. WARRINGTON: Have you any samples of soap here which we may display for the purpose of illustrating what you have just stated in respect to them?

Mr. MACDONALD: I have.

571 Mr. WARRINGTON: Will you produce them. We would like to show these to the Commission (exhibiting).

Mr. MACDONALD: Here are the two sizes of Ivory soap (exhibiting); one hundred six-ounce cakes to the box, and one hundred ten ounce cakes to the box.

Mr. WARRINGTON: And this brand is Lenox? (Exhibiting.)

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: What is this brand (exhibiting)?

Mr. MACDONALD: It is a soap used very largely here in Washington.

The CHAIRMAN: Is there any substantial difference between the Lenox and the other brands aside from the Ivory Soap?

Mr. MACDONALD: There is a substantial difference in quality; yes, sir. The Lenox is the best grade of yellow laundry soap which we make.

Mr. WARRINGTON: That, then, is your standard laundry soap?

Mr. MACDONALD: It is our standard laundry soap.

The CHAIRMAN: And aside from the Ivory soap, your other brands are of inferior quality and less value?

Mr. MACDONALD: Of inferior quality and less value; very much so.

572 Mr. WARRINGTON: You may give the other brands and display each one, Mr. Macdonald.

The CHAIRMAN: Is it needful to go into the minute differences of the several brands of soap?

Mr. WARRINGTON: No, sir; we will take but a moment.

Mr. MACDONALD: Here are two soaps I display for the reason that we are obliged to make them to meet competition in the Southern States—and which we are not very proud of—very low grade soaps, "Every Day" and "Banjo."

The CHAIRMAN: Your Ivory Soap has some characteristics of proprietary articles?

Mr. MACDONALD: We think very many. We have spent an enormous amount of money advertising it, and the excellence of the soap and the quality of the soap has been kept at the very highest standard; and there is a sale for it everywhere, I might say.

The CHAIRMAN: And the others are all more or less competitive with similar soaps made by other manufacturers?

Mr. MACDONALD: The others are all very competitive, and I will say, as one of the other soap makers said in his deposition, that we find more and more each day that a very small variation in price will swing the trade from one of these brands to another. If the Star Soap is 10 cents lower than ours, they get ahead of us; and *vice versa*.

573 Mr. WARRINGTON: What are your raw materials which you say you derive from all parts of the country?

Mr. MACDONALD: The leading raw material in the manufacture of soap is tallow. We bring tallow from Eastern points, New York, Boston, Pittsburg, Cleveland, from Detroit, very largely from Chicago, and from the Missouri River; also, of course, from St. Louis, and many other points which I have not mentioned. I might say the same is true of grades of grease which do not vary so much in quality. Our alkilies come from New York State. Our salt comes from Cleveland. Cotton seed oil comes of fourse from the South and from Texas, and rosin from the South. We use cotton wood lumber for our boxes, made up into shooks, and they come primarily from Arkansas; we get them from Cairo.

Mr. WARRINGTON: What, if any, portion of your rosin do you get from Georgia?

Mr. MACDONALD: The rosins come from Georgia; largely from Savannah, which is the great rosin market. The cocoanut oil, I might say, is an imported article.

Mr. WARRINGTON: To what extent do you use the defendant carriers in receiving and distributing your materials and product?

Mr. MACDONALD: Well, taking first the line of the B. & O. S. W., we make carload and less than carload shipments to all points
574 west passing through St. Louis, to St. Louis, and points in Illinois, Indiana and Ohio. Using this as a part of a through line in connection with the Baltimore & Ohio we make shipments to Pittsburg, Wheeling, Cumberland, Washington, Baltimore, New York, both in carloads and less than carloads. Taking the C. H. & D., we make shipments to points in Ohio, and I might say the C. H. & D. in connection with the Panhandle, in Ohio, Indiana, and Illinois. Using the C. H. & D the Panhandle and the Pennsylvania as a through line we make shipments to Pittsburg, Altoona, Harrisburg, Lancaster, Newark and of course in all these cases to very many of the smaller points which I do not mention.

Mr. WARRINGTON: Philadelphia?

Mr. MACDONALD: Yes, sir; Philadelphia. Taking the Big Four, or the 3 C's & St. L., we make shipments to Ohio, Indiana, Illinois, Wisconsin, and Michigan; and using this as a part of the through line in connection with the Lake Shore and the New York Central, we make shipments to Erie, Pa., Buffalo, Rochester, Syracuse, Utica, Albany, New York City and New England points. I believe that is all of them.

Mr. WARRINGTON: What proportion, if you know, of your
575 traffic is in carload lots and what in less than carload lots?

Mr. MACDONALD: 65 per cent. in carloads and 35 per cent. in less than carload lots.

Mr. WARRINGTON: Does that apply to your soap traffic?

Mr. MACDONALD: Those figures cover the soap traffic only.

Mr. WARRINGTON: Is that on the product that is shipped out?

Mr. MACDONALD: That is on the soap shipped out.

Mr. WARRINGTON: In bringing raw materials in, do you bring any in less than carload lots?

Mr. MACDONALD: In a very small way.

Mr. WARRINGTON: That is principally in carload lots?

Mr. MACDONALD: Principally in carload lots.

Mr. WARRINGTON: What have you to say on behalf of the Procter & Gamble Company of the classification which is now in force in what is known as the Official Classification district?

Mr. MACDONALD: We are not satisfied. I might divide our causes of dissatisfaction—I might give four reasons for our dissatisfaction; first, undue prejudice, because while this change in classification is made admittedly for the purpose of getting more revenue it was only placed on a portion of the articles in the classification and only a portion of the commodity rates were changed. That is, in-
576 stead of the burden being divided between all commodities and all classes it was only placed on a portion of them. Second, we believe rates that were reasonable and fair to the carrier in 1889 are fair to-day. We believe that soap rates that were higher in 1899 than in 1887 must be very much fairer to-day. Third, that if, as is said by the railroads, there is a necessity for an increase in rates, and if, as has been said, their effort was to place it on articles which could bear it, competitive soaps cannot be classed as such. They cannot stand an advance. Fourth, we believe that soap as an article of classification is as desirable, and even more desirable, than any manufactured article and is entitled on its own merits to the classification we claim; that is, to fourth class in less than carloads and sixth class in carloads.

Mr. WARRINGTON: Mr. Macdonald; speaking of undue prejudice against soap, I wish you would be a little more specific, if you can, and explain why and in what different respects there is such prejudice under this classification, and I direct your attention especially to competitive soaps.

Mr. MACDONALD: Well, to explain first in detail the facts about all the articles not having been advanced, and I would say in
577 regard to the classification it is very difficult to determine exactly the number of commodities represented in the classification, as there are a great many styles of packing.

Mr. WARRINGTON: Of what?

Mr. MACDONALD: Of packing. In respect to a great many articles, the same commodity appears a number of times in the classification.

Mr WARRINGTON: About how many?

Mr. MACDONALD: There has been a computation that there are 7,500 entries in the classification and only 1,100 changed. If that statement is not perfectly clear, we have a statement of Mr. Guilford made in Washington in regard to commodity rates on the New York Central road.

Mr. WARRINGTON: Well, assuming that there were 1370 commodity rates, how many were changed?

Mr. MACDONALD: 2275.

Mr. COLSTON: Are you stating now what Mr. Guilford said?

Mr. MACDONALD: I am stating what Mr. Guilford said here at Washington.

Mr. COLSTON: I hardly think that is competent, what Mr. Guilford said.

578 Mr. WARRINGTON: I think, if your honors please, that these are admissions on the part of the railroad companies. When they have a Classification Committee which stands for them and it comes here and before your honors and makes statements as to what it did, that Classification Committee speaks for the railway companies within this Official territory. Now, Mr. Guilford was not on the Classification Committee, it is true. He was ho-ver, a representative of the New York Central and spoke for that company here in respect of this classification, and that company was one of the companies that adopted the recommendations of this Classification Committee. More than that Mr. Terry of the New York Central is one of the Classification Committee, and while he was never told anything by Mr. Guilford—far be it from me to intimate that anything was ever stated by Mr. Guilford to Mr. Terry, yet Mr. Terry was within earshot and heard what Mr. Guilford thought and what Mr. Guilford expressed as the desires of the New York Central. Now, it is one of these parties and it is speaking to your honors as one of these parties, and when we deal with classification we are dealing, as counsel tells us, with a tax, ultimately—its ulterior purpose is—a tax; it is a complication question and no man can describe to your honors the exact reasons which move him in reaching his dissatisfaction or

579 causes dissatisfaction without comparing the effects upon the traffic with the reasons assigned for the classification. There is an indis-oluble connection between the motives which induced this classification and its effects. If one were to find that a classification were absolutely necessary it its effects were consequently inevitable, he might say I must submit, this is a condition. If, however, he sees that the motives are not sound in the sense that there might have been a different classification so as to have produced a different effect, then his dissatisfaction is aroused by that device in the original promise of the classification. He attacks it at its initial point and says it was not necessary to produce this. Now, that would certainly arouse dissatisfaction in the mind as any injurious thing which was equally unnecessary would arouse in the mind of anyone. Now, your honors, we cannot speak to you what is in our minds unless you will permit us to use what you heard as reasons for this classification. Is that hearsay in any evidential sense? Is there anything better established than that admissions of parties to a case, either through themselves or their authorized agents, are original evidence? If it is necessary and we are not violating the rule against hear-

580 say, it seems to me that your honors would only partially hear the case if you would shut out those reasons which are the offspring of the statements assigned here as reasons for the classification of which we are complaining.

The CHAIRMAN: While the statements of Mr. Guilford doubtless are competent as admissions or declarations of the carrier with which he is connected and which he represented, it is at least a serious question whether, as this case now stands, what Mr. Guilford said on a former occasion can be shown as against the other defendants in this

proceeding. Certainly, it is desirable to avoid a doubtful method of proving a fact which if material, can be shown in some other way. The rate sheets show how many and what articles were carried at commodity rates prior to the 1st of January and how many are carried, and how many, at commodity rates under the new classification, and will not a comparison therefore show the difference in number and the precise fact which you are asking to show by this witness?

Mr. BAYLESS: I understand that what Mr. Guilford said relately solely and al/one to the New York Central and in-luded the entire classification, State as well as inter-State, and therefore in this
581 matter would have no bearing.

Mr. WARRINGTON: We see the force of the court's reasoning and yield to it. Mr. Macdonald, with- alluding to what Mr. Guilford said, tell us what proportion of the entries in the class to which soap is assigned were made the object of additional tax, assuming that additional tax or revenue was the purpose, or in the whole classification took the rates. How many were there and how many were taxed?

Mr. MACDONALD: I do not think that counting commodity for commodity that there were more than 15 to 20 per cent, and I know of my own knowledge, my own knowledge of commodity rates that we have in use ourselves, in different parts of the country, that a very large proportion of the traffic passing over the railroads bore no advance in rate.

The CHAIRMAN: That is to say, the change in classification affected in your judgment from 15 to 20 per cent.?

Mr. MACDONALD: Not of tonnage, but of commodities.

The CHAIRMAN: The commodities which appear in the classification?

Mr. MACDONALD: Yes, sir. I do not contend that that is the tonnage.

582 The CHAIRMAN: Twenty per cent. of the articles?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Now, on that point, do you happen to know about how many articles were in the sixth class prior to the 1st of January?

Mr. MACDONALD: No, sir; I do not.

The CHAIRMAN: Do you know how many were changed from sixth to fifth class, speaking of carloads, by Classification No. 20?

Mr. MACDONALD: I do not believe I know that. I never counted that up.

Mr. MAXWELL: We have statements prepared showing that and will submit them .

The CHAIRMAN: Were there articles in the sixth class which were in any way competitive with soaps?

Mr. MACDONALD: I hardly think I understand you.

The CHAIRMAN: That is, articles which can be used for similar purposes or can take its place or of such a nature that a change in those would affect the sale or distribution of soap?

Mr. COLSTON: That is to say, whether anything was left behind in sixth class that would be competitive with soap.

Mr. MACDONALD: I do not think so.

583 The CHAIRMAN: For example, the change in the rate on wheat without any change in the rate on flour might operate to the serious disadvantage of those interested in one article or the other. So, a change in the rate on bar iron as compared with manufactured hardware might have a corresponding effect. But unless there is something, or was something, in the sixth class which had some sort of relation to soap, how do your make out that prejudice resulted to the soap manufacturers from the change in classification of soap; I mean in comparison with other articles?

Mr. MACDONALD: In the first place, we do not make that contention. We do not contend that soap was put up, for instance, and washing powder was not. We draw our prejudice from this fact: that this advance is admitted to be for the purpose of obtaining more revenue.

The CHAIRMAN: You do not contend that this change in classification of soap resulted in undue prejudice to that article as compared with other articles?

Mr. MACDONALD: Not as to soap as compared with washing powders.

The CHAIRMAN: Or any other articles?

584 Mr. MACDONALD: Why, yes, we do maintain that. We maintain that when railroads make an increase in classification for the sole reason of getting more revenue, that that revenue should be obtained by a horizontal advance in rates. We claim, further than that, that soap has higher rates now than in 1887. The average rate per ton per mile has come down all the time, so that the average article has had a big reduction in rates; and we do not think when a time comes when it is claimed that an additional burden should be imposed that this article should be selected. We think that some article should be selected that has been coming down all these years.

The CHAIRMAN: That is, that there are other articles that still remain in the sixth class that were better able to bear an increase rate than was soap?

Mr. MACDONALD: No, sir; hardly that. It means that an article might have been advanced from sixth to fifth class which has had a reduction since 1887. It had better be put back to the 1887 price rather than to have us materially advanced above the 1887 prices.

The CHAIRMAN: Then your argument or statement goes to the character of the traffic as respect its weight, volume, desirability as

585 compared with other articles and not to the relation of soap to other articles as to the uses to which it is applied?

Mr. WARRINGTON: As a competitive article. I do not understand the question—you do not claim that soap is a competitive article with any others which were in sixth class and which were not advanced?

Mr. MACDONALD: No.

Mr. WARRINGTON: But your statement amounts to this, then, that soap, on account of its desirability, its value, and the way it is boxed and shipped, should have as low a rate as other articles still carried in the sixth class?

Mr. MACDONALD: That is our contention exactly.

Mr. WARRINGTON: In other words, soap may be prejudiced without being disassociated with articles with which it is in competition? Is that true?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: That if soap powder had been left in the sixth class and your soap carried to the fifth class, that would have been one mode of prejudicing your kind of soap?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: But your contention is that there are
586 other modes of prejudicing soap and your business?

Mr. MACDONALD: We certainly think so.

Mr. WARRINGTON: I want to call your attention, while on this feature, to this: What is there of a manufactured nature that is more desirable or better as a article of freight than soap that is left in the sixth class? What manufactured article is more entitled to be there than common soap?

Mr. MACDONALD: I have gone very carefully over the articles in sixth class, carloads, and fourth class, less than carloads, manufactured articles, and taking into consideration all of the elements which it is conceded to go to make up classification, I consider that soap is as desirable, and in most instances more desirable, than any of these manufactured articles.

Mr. WARRINGTON: Could you enumerate a number of the articles or do you want anything to refresh your memory.

Mr. MACDONALD: What was the question?

Mr. WARRINGTON: I will ask the stenographer to repeat it.

The question was repeated.

Mr. WARRINGTON: I mean the number of manufactured articles in the sixth class with which soap is entitled to be classed when you consider freight classification?

587 Mr. MACDONALD: The first that occurs to me is starch, which though classified the same as soap, is given the grain rate, and known as a grain product. Soap excels it in every element of classification. The value is not any less and in some instances more than competitive soap. It is only about half as dense; its volume is very much less, and it only affords the railroads one haul. That is, I do not understand that corn can move a long distance into the starch factory and then the starch move back into that same territory.

Mr. WARRINGTON: Why?

Mr. MACDONALD: Well, because the starch could be manufactured cheaper right in the corn belt.

Mr. MAXWELL: Is Mr. Macdonald informed about starch manufacturing? He is giving his theory.

The CHAIRMAN: He does not need to go further than that.

Mr. BAYLESS: He is giving his opinion as to other articles compared with soap. So far as his testimony has gone, he has had no experience with general traffic at all—only in connection with soap manufacturing—soap and other products of Procter & Gamble. Now, as to other articles it seems to me that the Commission is just

as well advised as the witness; he has had no experience
588 & 589 in those matters. He has not been connected with a starch factory. He does not know anything about the grocery business or any of these things, no more than this Commission does, and if opinions should be taken it should be the opinions of traffic men who have had experience in all this work, and not take a man and let him compare one article with another who has had no experience except in respect to one line.

The CHAIRMAN: It would seem that any well informed business man could tell us how the value, weight and character of starch and other common articles compare with soap.

Mr. COLSTON: He was speaking of the haul.

The CHAIRMAN: I suggested that he should not go into that. He was asked to illustrate what he means. He said there are articles in the sixth class, which still remain in that class, which should bear as high a rate as soap, and he gives soap as such an article, and those reasons given so far are only those within the ordinary experience.

Mr. MAXWELL: You are taking the statements of a man in respect to something he does not understand.

The CHAIRMAN: Mr. Macdonald, suppose you describe first as to soap, the manner in which your soap is shipped, the size and
590 weight of the boxes and the number put in a car, some facts of that sort.

Mr. WARRINGTON: And the density. What is the density of soap? How much per cubic foot does soap weigh?

Mr. MACDONALD: It runs from 40 to 50 pounds per cubic foot.

The CHAIRMAN: Tell us how it is shipped.

Mr. MACDONALD: It is shipped in boxes, varying in weight. Our standard brand of Lenox Soap weighs 75 pounds net. We pack soap at 62½ pounds net.

The CHAIRMAN: Are all of the boxes one size?

Mr. MACDONALD: All of one brand are the same size. The box on the Lenox brand weighs eight pounds, making the gross weight 83 pounds. In regard to the density of soap and that it is as good in this respect as any other article of freight——

Mr. WARRINGTON: Before you leave that, finish up this other matter and make it as plain as you can, as to how you ship soap. Start with the packing of it and as it goes into the cars.

Commissioner YEOMANS: How many bars in a box and how many boxes in a car and what they all weigh.

Mr. MACDONALD: I will take the Lenox, which is the leading brand; 100 twelve-ounce cakes to the box.

591 The CHAIRMAN: How large is that box?

Mr. MACDONALD: I do not believe I have the cubic measurement of the box. It weighs approximately 45 pounds to the cubic foot. I can inform myself on that very easily. I measured a cubic foot of it only.

The CHAIRMAN: How many cubic feet of soap are in these boxes, of the Lenox soap?

Mr. MACDONALD: When full, something less than two feet.

The CHAIRMAN: What is the weight of a box of Lenox Soap?

Mr. MACDONALD: Eighty-three pounds.

The CHAIRMAN: If there were 2 cubic feet it would weigh 90 pounds, and it lacks 7 pounds of being 2 cubic feet?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: How much is put in a carload, in weight?

Mr. MACDONALD: The carload minimum on soap is 30,000 pounds.

Mr. WARRINGTON: What is the maximum?

Mr. MACDONALD: We can always load to the capacity of the car.

The CHAIRMAN: How many boxes in the minimum carload, 30,000 pounds?

Mr. MACDONALD: Approximately 400. That is what we consider a carload; that makes about 30,000 pounds.

592 The CHAIRMAN: Is there any difference between Lenox and other brands in these respects?

Mr. MACDONALD: No material difference.

The CHAIRMAN: Do you ship them in about the same size of box?

Mr. MACDONALD: As we pack the soap in smaller size of cakes, 10 ounce instead of 12 ounce, that would be 62½ pounds instead of, and gross 70 pounds instead of 83, and that reduction in the size of box.

The CHAIRMAN: Are those the two standard sizes in which the soap is shipped?

Mr. MACDONALD: The soap is shipped in boxes of 60 pounds net, 66 pounds gross; in 62½ pounds net, 70 pounds gross, and in 75 pounds net and 83 pounds gross. Those are the three common sizes.

The CHAIRMAN: How is the traffic divided as to the three sizes?

Mr. MACDONALD: The great volume is 83-pound soap.

The CHAIRMAN: That is the standard?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Including the box about 83 pounds?

Mr. MACDONALD: Yes, sir.

593 The CHAIRMAN: And 400 boxes makes about a minimum carload?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: And you say you can always get the minimum weight in a car?

Mr. MACDONALD: Take the smallest car I have ever seen, and we can load it beyond the capacity.

The CHAIRMAN: Do you load beyond the capacity as a rule in fact?

Mr. MACDONALD: We load heavy cars to our own agents in large cities; we always give the railways the benefit of that. We would be very glad to do it selling to jobbers or wholesale grocers, but we are obliged to allow them a carload discount on account of the carload weight and fix a minimum for that, but naturally the grocer does not want to invest any more money or use up any more space than he has to to get the carload rate and he is not apt to exceed the minimum very much, if at all.

Mr. WARRINGTON: The question was asked do you load to the minimum capacity?

The CHAIRMAN: He says he does in all cases.

Mr. WARRINGTON: When sending to your agents do you
594 not load above the minimum capacity?

Mr. MACDONALD: Very much.

Commissioner CLEMENTS: You mean tariff minimum weight, not capacity?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: The cars you are carrying are 60,000 pounds capacity.

Mr. MACDONALD: The cars that come to us do not average anywhere near 60,000 pounds,—the cars we load from day to day.

Mr. WARRINGTON: Mr. Macdonald, I wish you would proceed further with starch, if you have not said all you wish to on that subject.

Mr. MACDONALD: I spoke of the density, which is less than soap, the value, which might average——

Mr. MAXWELL: That is another thing. Does this witness know that? Are we to be confronted with mere conjectures?

The CHAIRMAN: Not unless you know the value of starch.

Mr. MACDONALD: I have taken information from depositions.

Mr. WARRINGTON: We will show what it is, your honors.

Mr. MAXWELL: We do not object to it being shown by a proper witness.

Mr. WARRINGTON: What do you say of cereal products in comparison with soap?

Mr. MACDONALD: Cereal products are lighter; some of them
595 are very much less valuable than soap, and the package goods, such as Quaker Oats, are more valuable. Of course flour considered by itself is very, very much greater than soap in movement, but picking out any one of the cereal products its volume is less than soap.

Mr. WARRINGTON: What have you to say of rice?

Mr. MAXWELL: What does he know about rice?

Mr. WARRINGTON: What do you know about rice?

Mr. MACDONALD: It is less valuable.

Mr. MAXWELL: We want to know first what he knows, whether he knows anything about it, or whether it is merely hearsay.

Mr. WARRINGTON: Your honors, I do not know whether it is necessary to say anything, but I do not like these comments we hear every time one of our witnesses goes on the stand. Every man in this town knows what rice sells for. There are some things—if you are going to ascertain the value of real estate, you would have to come here qualified in a peculiar way, but——

The CHAIRMAN: It is unnecessary to argue it further. We are disposed to let Mr. Macdonald say what he knows about familiar articles, such as have been mentioned.

596 Mr. MAXWELL: We desire to have the objection appear upon this record. The claim is distinctly developed and the only claim in this case, the only claim there can be in this case is that the rate upon soap is unreasonable because the rate on something else is too high. Now, this witness doubtless entertains that view, but if that is to be made the basis of the attack upon the

reasonableness of the charge for the transportation of soap in a proceeding which can have no consequence except as preliminary to a judicial proceeding, we think we ought to be confronted with the testimony of persons who have knowledge of the subject concerning which they are speaking; and Mr. Warrington's irritation is entirely unjustifiable. We think we ought to be confronted and that your honors ought to be confronted with somebody who knows something particularly about rice and not take the statements of a witness which are largely conjecture, of a man who knows nothing about that subject and whose opinion is only based on theory that rice is no more desirable as an article of transportation than soap. When the test was applied to him as to what he knew about the price of starch he admitted he discovered what he knew from the testimony of some other witness.

Mr. WARRINGTON: If your honors please, all of these questions go to the ultimate making up of a case. There are articles
597 about which you should require expert testimony possibly, but that can never be so in regard to a commodity that is perfectly well known.

The CHAIRMAN: We do not think it is necessary to argue the point. We assume that Mr. Macdonald as the Traffic Manager, so to speak, of this corporation is reasonably familiar with the weights, values, and general characteristics of articles of shipment which are in common use, and it seems to us that it is not unsuitable for Mr. Macdonald to state, if he knows, that starch, for instance, is less or more valuable, less or more dense, of less or greater volume than soap. I could qualify myself as a witness on that in five minutes by making two or three inquiries. He may be mistaken about it, but that would go to the value of his testimony.

Mr. MACDONALD: I would like to explain the way a traffic manager of a manufacturing concern must come in contact with such things, even outside of an occasion of this sort. Take the matter of starch, for instance. I am very much interested in the rates applying between Chicago and the Ohio River and St. Louis and I get all the issues of those tariffs. I take the commodity rates in each one, and I see that starch is enjoying a rate of 9 cents between
598 Cincinnati and St. Louis and our rate is 15 cents; that opens up an avenue for investigation. I go to the traffic managers and inquire into the matter, and it is only natural to know something about the value of starch and its density.

Mr. WARRINGTON: What have you to say of rice, coming back to that subject, in comparison with common soap?

Mr. MACDONALD: Rice is denser than soap, but that has no effect on classification for the reason that either one can be loaded to the capacity of any car. It has a smaller movement. Its value is greater than competitive soap, and it has limited sources of production, which is with them an element in classification.

Commissioner CLEMENTS: When you speak of greater density you mean greater weight for a given space?

Mr. MACDONALD: Yes, sir; greater weight per cubic foot. And rice only affords the railroads one haul.

Mr. MAXWELL: Does the witness know anything about that?

Mr. WARRINGTON: Yes, sir; go on and tell about that.

Mr. MAXWELL: I want to know whether he knows this or only has some conjecture about one haul.

The CHAIRMAN: What do you know about that, Mr. Mac-
599 donald?

Mr. MACDONALD: I do not see that that takes any great knowledge. It is reasonable to suppose that rice comes from Southern States; that it could not be shipped to Cincinnati and back to that point again.

Mr. WARRINGTON: It would require a traffic man to explain that for them.

Mr. MAXWELL: He does not know anything about it. We want the record to show——

Mr. WARRINGTON: The record shows everything that has been said.

Mr. MAXWELL: We want the record to show that we object to this testimony of Mr. Macdonald upon the ground that it does not appear that he is qualified to testify to the relative desirability of rice with soap as an article of traffic, especially the statement about one haul as an element in that question.

Mr. COLSTON: I want to enter an objection on the one haul as to this witness's testimony. It makes no difference whether it has one or two hauls in the matter of fixing rates. It is not a fair or relative mode of fixing it.

The CHAIRMAN: I think we appreciate what your objections are.

600 Mr. MACDONALD: I do not want to be understood that a wholesale grocer in Cincinnati could not buy rice and bring it there from New Orleans in carload lots and then ship it out in less than carload lots to points within a radius of 100 miles. I do not see how rice can afford the railroads two hauls. It could not go back to where it came from. That is what soap does.

The CHAIRMAN: So far as that matter of double haul is concerned you are simply assuming the facts without actual knowledge of them, as I understand, and there is nothing more about that than appeals to the experience of well informed men?

Mr. MACDONALD: That is all.

The CHAIRMAN: Proceed, Mr. Warrington.

Mr. WARRINGTON: Are there any other articles that you think of in the sixth class with which you can make comparison?

Mr. MACDONALD: There are some chemical articles that are not as good freight, we think, as soap. Pardon me, I will have to refer to a memorandum. Take the article of bleaching powder. It is higher in price than soap. Bone black and bone dust and blue vitriol.

Mr. COLSTON: Is that higher in price than soap?

Mr. MACDONALD: Yes, sir.

601 Mr. WARRINGTON: Are you sure about bone dust?

Mr. MACDONALD: Bone black; I understand them practically to be the same thing. I may be mistaken about that.

Mr. COLSTON: Did you say that they are the same thing?

Mr. MACDONALD: Yes, sir; I say I may be mistaken about that.

Mr. MAXWELL: I do not wish to take up the time of the Commission, but we wish to renew our objections to this evidence concerning the comparative desirability of these chemical articles with soap, on the ground that he does not appear to be qualified to testify on that.

The CHAIRMAN: It is understood that your objection applies to all of this testimony.

Mr. COLSTON: I suppose that applies to the objections of all counsel.

The CHAIRMAN: Yes, sir.

Mr. WARRINGTON: What have you done to inform yourself on these articles?

Mr. MACDONALD: I have inquired the prices on them.

Mr. WARRINGTON: Are the prices uniform? Are they articles that have uniform prices in the market?

Mr. MACDONALD: Yes, sir.

602 Mr. WARRINGTON: What are the peculiar features now of soap aside from what you have stated that makes it desirable as a freight commodity? You have spoken of density; you have spoken of bulk; you have spoken of volume; you have spoken of price. Have you spoken of volume?

Mr. MACDONALD: I intended to speak of volume. The volume of soap business is very large of course.

Mr. WARRINGTON: And how does the average price now of common soaps compare with the price of the articles that you have mentioned?

Mr. MAXWELL: We renew our objection.

Mr. WARRINGTON: Have you gone over the series of articles in the sixth class with a view of ascertaining whether there was any manufactured article there more desirable for freight than soap?

Mr. MACDONALD: I have.

Mr. COLSTON: We object.

Mr. WARRINGTON: Gentlemen, if it will suit you—I do not know whether it will or not—it will be understood that your objection goes to all of this.

The CHAIRMAN: I so understood it.

Mr. WARRINGTON: And objection of each counsel may be so regarded.

603 Mr. WARRINGTON: What has been the result of that investigation? What is its result?

Mr. MACDONALD: In my opinion soap is as desirable, and in many instances more desirable than any of these manufactured articles.

Mr. WARRINGTON: When soap is shipped in less than carload lots, does it, or not, communicate or receive any injury to or from other articles?

Mr. MACDONALD: It does not. It is a very desirable article in that respect.

Mr. WARRINGTON: What, if any, detriment to the car is occasioned by soap?

Mr. MACDONALD: No detriment at all.

Mr. WARRINGTON: How are these packages in size,—that is, boxed—with respect to convenient handling in loading and unloading?

Mr. MACDONALD: They are most convenient; readily handled and packed closely in the car.

Mr. WARRINGTON: How many men does it take to handle one of the boxes?

Mr. MACDONALD: One man can handle a box very easily. They are handled on trucks. Five or six of them put on a truck,
604 or they can use a platform truck and pile twenty-five of them on.

Mr. WARRINGTON: Suppose there be a wreck, what, if any, article now of a manufactured character, apart from iron or some metal, is less susceptible to injury? Do you know of any?

Mr. MACDONALD: I do not know of any. I have had a long experience with our company and I find cases very rare where there is any damage done to soap in transportation.

Mr. WARRINGTON: You may now proceed along with the reasons that you have assigned; you spoke of undue prejudice. Have you said all you wish to on that subject?

Mr. MACDONALD: It occurs to me that I did not properly emphasize in the desirability of soap as freight the value of the service to the shipper. The competitive soap cannot afford to pay anything more than a minimum rate on account of competition in the soap business and the presence of local manufacturers everywhere.

Mr. WARRINGTON: I wish you would describe more particularly what you mean by competition in the soap business.

Mr. MACDONALD: I do not think there is any business in which the competition is keener than in the soap business. We have, first, the very large manufacturers, who have in the past distributed
605 their product all over the country and between them the fight for business is very keen. They have their salesmen and subsalesmen out; they do advertising work, and the competition between them is certainly as great as in any line of business. The most insurmountable competition we have is that of the local manufacturer.

The CHAIRMAN: That is to say, laundry soaps are manufactured nearly everywhere?

Mr. MACDONALD: Yes, sir. They can get their stuff at home and get rid of it at home. They get rid of the expense of distribution, the expense of selling and the expense of transportation.

The CHAIRMAN: There is a small soap maker in every considerable town?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: And there are very large manufacturers of soap?

Mr. MACDONALD: I would like to illustrate that local manufacturer matter by one instance.

Mr. COLSTON: They are getting ready to be swallowed.

Mr. WARRINGTON: For the railroads to swallow them.

Mr. COLSTON: The railroads don't pay 20 per cent.

Mr. WARRINGTON: They don't to their stockholders.

606 Mr. MACDONALD: I want to illustrate by one point about the way in which the local men can compete. For instance, we find them there in Cincinnati, and it is the same in other cities—they take back the soap boxes and make a credit of 10 cents to the dealer who returns the box to the factory. It is quite impossible for any large business to start a practice of that sort; we could not limit it to one place. That is one illustration of the big advantage they have.

Mr. WARRINGTON: Suppose there were no competition in localities but the local manufacturers and which could not be reached by the companies engaged in a wider range of traffic, what would be the effect of that?

Mr. COLSTON: We object to that question as one not proper for this witness to answer.

The CHAIRMAN: Possibly he is no more qualified to draw that inference than the members of the Commission.

Mr. WARRINGTON: I will not press it.

The CHAIRMAN: As far as you can, seek to elicit facts.

Commissioner CLEMENTS: Then you can make the inferences in your argument.

Mr. WARRINGTON: What if any arrangement is there between the soap companies, the soap producers, by which they could

607 raise the prices of soap so as to absorb the additional tax that the railroad companies might from time to time want to put on them? Is there any?

Mr. MACDONALD: There is none.

Mr. WARRINGTON: Is there any trust?

Mr. MACDONALD: There is no trust; and to illustrate how far we are from any combination on prices I will say that the only national association that we ever had, which existed in 1889, was broken up when the members of it attempted to introduce resolutions aiming to control the prices.

The CHAIRMAN: It answers our present purpose to state that there is no combination or agreement among soap manufacturers to the witness' knowledge as to the price at which they shall sell.

Mr. WARRINGTON: Very well. How have the rates on soap been? Have they been variable or constant?

Mr. MACDONALD: The rates on soap were higher in December, 1899, before the advance of which we are complaining than the rates established in 1887. I can explain that more in detail by saying that in 1887 the less than carload rate on soap was fourth

608 class, net weights, and the carload rate was fifth class, net weights. The net weight practice was withdrawn for two years, and we paid on gross weight, equal to advance of one-sixth on our gross weight. Then it was reduced to the former basis by this Commission, which made it the same as in 1887.

Mr. WARRINGTON: What was that equivalent to?

Mr. MACDONALD: From fifth to sixth class; equivalent to returning to net weight. In less than carloads the rates were not reduced,

so that they continued one-sixth higher than established in 1887. Then we have had since then minor advances, and readjustments of the Central Freight Association which tended to slight advances. There was a material advance to Mississippi River points in 1896 and during the spring of this year our minimum carload was advanced from 24,000 to 30,000 pounds. So the first of the year found our carload rates the same as 1887 with the minimum increased from 24,000 to 30,000 pounds and our less than carload rates one-sixth higher than in 1887.

Mr. WARRINGTON: Have you a chart that you have made which will illustrate this?

Mr. MACDONALD: I have.

Mr. WARRINGTON: Please produce it. What is that chart?

609 Mr. MACDONALD: This is a chart made up expressed in percentages, these figures (indicating) being the percentages.

Mr. WARRINGTON: Who made this? Was it made under your direction?

Mr. MACDONALD: It was made under my direction, from my computation of figures, and I know it to be correct.

Mr. WARRINGTON: I want to show it to counsel on the other side.

Mr. MAXWELL: It seems to be an illustrated argument.

Mr. COLSTON: Do you want to offer it now?

Mr. WARRINGTON: Yes, sir.

The CHAIRMAN: It shows the changes in rates per ton per mile besides changes in rates or classification?

Mr. MACDONALD: Comparison between changes in classification of soap and the average rate per ton per mile.

The CHAIRMAN: The average rate per ton per mile on soap?

Mr. MACDONALD: On all articles; that is, the general trend of rates.

Commissioner CLEMENTS: Soap compared with general articles?

Mr. MACDONALD: Soap as compared with the general trend of rates per ton per mile.

Mr. MAXWELL: Do you know what the changes in the aver-

610 age — his information?

The CHAIRMAN: You are asked as to the sources of your information as to the average rate per mile for the years covered by your diagram.

Mr. MAXWELL: We want to see whether we shall object.

Mr. MACDONALD: I have been given no opportunity to explain. I was going to tell that.

Mr. WARRINGTON: Tell your sources of information on the whole subject.

Mr. MACDONALD: In regard to this rate per ton per mile we wanted to bring it to 1887 at the time the Official Classification was established. We had to get the figures going beyond the statistics of this Commission; so we took from Poor's Manual their rate per ton per mile for the calendar year 1887, and going from that to the rate per ton per mile for the whole United States shown by the statistics of this Commission as soon as they started, which was for the fiscal year ending June 30, 1888. Now 1.063 cents is taken as 100 per

cent. of the rate per ton per mile as shown each year by the Commission is reduced to a percentage basis and so appears on this
611 scale. In the same way the rates on soap are taken as 100 per cent., equalling the fourth class rate and net weight in 1887, and sixth class rate and net weight in 1887. The red line indicates less than carloads and the black line indicates carloads. We will follow here the less than carload rate. The less than carload rate started here in 1887, 100 per cent., fourth class, net weight.

Mr. MAXWELL: Now, if your honors please, having ascertained the sources of his information, it appears that he has taken the average for the whole United States, whereas the inquiry before this Commission has no relation to territory west of the Mississippi River or south of the Ohio. Their conditions are entirely different.

Mr. MACDONALD: Mr. Maxwell has called my attention to an omission made in my statement. The only reason we have not fixed this by groups is because the Commission did not begin their grouping until 1890. We wanted in this chart to bring it back to 1887. As an examination between the groups and the whole United States did not indicate any material difference in percentage, we did not think this was an unfair illustration of the fact.

612 Mr. WARRINGTON: Did you examine as to groups?

Mr. MACDONALD: I did.

Mr. WARRINGTON: And the same way of the whole United States?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: And you found what you have stated?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: Now proceed.

Mr. MACDONALD: Taking the less than carload rate here at 100 per cent. in 1887 at net weight—in 1889 the net weight practice was withdrawn, which had the effect of increasing the rate one-sixth. I desire to say in connection with that that is approximate. That is, the tare of the box has been estimated by this Commission at one-sixth. The less than carload rate remains stationary until over here.

Mr. MAXWELL: What year?

Mr. MACDONALD: January 1, 1900. We have given the railroads credit there for slight changes in rates in the way of advances that have been made. January 1, 1900, they raised our rates up here to 166 per cent. of the rates in 1887.

Mr. WARRINGTON: Of what they were—above or below?

Mr. MACDONALD: If 1887 equals 100 per cent., this equals 166 per cent. In other words, they have gone up 66 per cent. then
613 they were brought down until we average them on our business at 38 per cent. over what they were in 1887. The carload rate started here, fifth class, net weight, in 1887, went to 116⅔ per cent. in 1889, when the net weight practice was withdrawn—went up one-sixth. Here are the two years in which we were trying our suit.

Mr. WARRINGTON: What two years?

Mr. MACDONALD: 1889 and 1890. Beginning in 1891, in January, when we had our order, and the rate fell back to 100 per cent., or the same as in 1887. It went along that way clear up to January 1,

1900, excepting the change in the carload minimum in the spring of 1899. These rates January 1, 1900, went up to 120 per cent., where they now are. The rate per ton per mile we started here for the calendar year 1887, based on Poor's Manual for that year, and these figures have been reduced to percentages following the line. We have not put in here the average for 1899, which would carry it slightly below this, those averages having not been commuted. So you find here in 1898, the average rate per ton per mile received by everyone of these roads on all freight at 70 per cent. of the rate in 1887.

Mr. MAXWELL: You say 70 per cent.?

Mr. MACDONALD: 70 per cent. as compared with 100 per
614 cent. in 1887; that is, 30 per cent. reduction, whereas in the case of soap the carload rate has gone to 120 per cent., or 20 per cent. increase, and the less than carload rate to 138 per cent., or 38 per cent. increase. If you will just notice the difference between that line there and this line (indicating) you will see the difference between what the rate was and what it is now, on soap in less than carloads and the same on carloads, and the rate per ton per mile.

Mr. WARRINGTON: That is what the average rate per ton per mile on all articles?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: We wish to offer this in evidence.

(The same is hereto attached and marked Exhibit 1—Macdonald.)

Mr. COLSTON: We desire to note an objection to it. Our objection will go in the record.

Mr. WARRINGTON: It is simply as an illustration of the witness' testimony.

Mr. MACDONALD: In regard to that chart, the rate per ton per mile shown is the rate per ton per mile on all articles.

Mr. COLSTON: Taken out of Poor's Manual from 1887 up to the time that the statistical reports of the Commission started?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: And applies to traffic all over the United
615 States?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: And after comparison with groups in the Official Classification?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: What has been the reduction in the price of soap during these years that you described in Exhibit 1?

Mr. MACDONALD: The price of Lenox Soap, our standard brand, and representative of our soaps, was in 1887 $3.55 and it is to-day $2.70. The lowest price reached has been $2.55, the price pior to January 13th.

The CHAIRMAN: And has it at any time been higher than $3.55?

Mr. MACDONALD: No, sir. I desire to allude if I may be allowed to a matter to clear up some misunderstanding that has existed as to the price of our soaps as developed in the depositions. We made two changes in price prior to December 23, 1899 in which we advanced soaps other than Lennox in one instance. That is, we made a slight

advance in our miscellaneous brands running from 10 to 15 cents per box, and then on January 13th, when we did not advance these other brands, but advanced Lenox. So there was only one advance on any one soap.

616 Mr. WARRINGTON: You said you advanced your soaps other than Lenox. Did you mean to include Ivory Soap?

Mr. MACDONALD: No, sir; I did not.

Mr. WARRINGTON: What have you to say about that?

Mr. MACDONALD: The price on Ivory has been the same for a great many years.

Mr. COLSTON: For how many years? Ever since it was made?

Mr. MACDONALD: I would not want to state positively about that, but the same I think since I have been in the employ of the Company.

Commissioner CLEMENTS: What is the price of that?

Mr. MACDONALD: $6.25 for a box of ten-ounce soap.

Commissioner CLEMENTS: You say you make eighteen or twenty grades.

Mr. MACDONALD: Yes, sir.

Commissioner CLEMENTS: And the last two you mentioned, that you said you were ashamed of, or not very proud of; which were very low grade. What is the price of those brands?

Mr. MACDONALD: We would be almost ashamed to say what we sell that soap for. We get down to where we sold a 60 pound box for $1.05. This soap is packed in a nice box and sold prepaid at some Southern points for $1.05. The price is higher now. It has advanced some 25 cents I think.

617 Mr. WARRINGTON: What uniformity, if any, has there been in the reduction of prices of the competitive soaps?

Mr. MACDONALD: The tendency has been downward since 1887; the price to the jobber, to the retailer and to the consumer has steadily decreased during those years.

Mr. MATTHEWS: On all brands?

Mr. MACDONALD: On competitive brands.

Mr. WARRINGTON: What was the object of these recent increases and the need of it?

Mr. MACDONALD: On account of the very large increase in the price of our raw materials.

Mr. WARRINGTON: State whether or not the increases made in December and January,—if those were the times,—absorbed the increase in raw materials?

Mr. MACDONALD: They did not anywhere near absorb it.

Mr. WARRINGTON: Why did you not increase far enough to absorb not only that, but the railroads' increased rates?

Mr. MACDONALD: On account of the competition, namely the competition of the local manufacturers, who, not having to pay freight rates either in or out, would not make an advance; we would have to meet his competition.

Mr. WARRINGTON: What has been the percentage in in-
618 crease of raw materials recently? State some of them, if you can recall.

Mr. MACDONALD: Tallow went up from 30 to 40 per cent. Cot-

ton seed oil costs twice in 1900 what it cost in 1899; there has been a very sharp advance in resin; an advance in boxes; an advance in all the leading grades of greases; a very marked advanced—in fact, I might say the most marked advance—was in the soap stock of which cheap soap is made, which have come very near trebling in price.

Mr. WARRINGTON: How is soap classed in the Western classification?

Mr. MACDONALD: As fifth class in carloads and fourth class in less than carloads. If I may be allowed, I will get my figures on that.

Mr. MAXWELL: In the Western Classification you say it is fourth and fifth class?

Mr. MACDONALD: Fourth and fifth; yes, sir.

Mr. WARRINGTON: What is the paper you have?

Mr. MACDONALD: It is a chart I have made up showing the classification of soap and some other articles in the Official, Western and Southern Classifications and also shows the commodity rates, for instance, from Cincinnati to Texas common points, Cin-
619 cinnati to California, and from Cincinnati to some points in the South where there is a commodity rate.

Mr. WARRINGTON: Who made that chart?

Mr. MACDONALD: I did.

Mr. WARRINGTON: What were your sources of information?

Mr. MACDONALD: I had the tariffs and classifications before me?

Mr. WARRINGTON: I will show this to counsel for the other side.

Mr. MAXWELL: We have examined it, if your honors please, and desire to object to its relevancy, being a comparison with conditions in some other part of the country.

Mr. WARRINGTON: We do not contend that it is controlling. We do not claim for it anything more than a mere item of evidence. We know what your honors have said on that subject and are intending to keep ourselves within your rule.

The CHAIRMAN: We will allow it.

Mr. COLSTON: We object to it on the ground of irrelevancy. It refers to parts of the country which have nothing to do with this inquiry.

Commissioner CLEMENTS: It is all shown by the classifications and tariffs on file here, I suppose.

Mr. MACDONALD: Yes, sir.

620 The CHAIRMAN: Tell us what it is.

Mr. MACDONALD: It is a chart showing different articles, soap, candles, rice, starch, cereal products, coffee, sugar, coffee, green, coffee, roasted, a distinction which is made in their classifications—canned goods, glucose, dried fish, fish pickled or salted, not otherwise specified in packages. The aim being to show a comparison of rates with the rates under the Official classification in carloads and less than carloads.

Mr. MATTHEWS: What the class is.

Mr. MACDONALD: What the class is. We note here some of the differences. In the Official Classification rice is a class lower than

soap. Cereal products are a class lower in carloads and two classes lower in less than carloads. Coffee is the same as soap. Sugar is the same as soap. Glucose in less than carloads is a class lower than soap. Fish, pickled or salted, is a class less than soap in less than carloads. In the Western Classification soap is classified fifth and fourth. Candles are classified the same. Rice is classified the same as soap instead of lower as in the Official Classification. Cereal products are classified the same as soap instead of lower as in the Official Classification. The Western Classification makes a distinction between green coffee and coffee roasted, the green being the same as soap and roasted coffee being a class higher in carloads and less than carloads than soap. Sugar is the same as soap; canned goods the same as soap, and fish, pickled or salted the same as soap.

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The CHAIRMAN: That shows the relative classification?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: We object to that, in that it involves distinctions that take us from this case to some other case.

Mr. MACDONALD: The differences in the Southern Classification are very marked. Soap is in the sixth class, any quantity, and candles are in the third class, any quantity. The difference between sixth and third class to Atlanta is the difference between 46 and 81 cents. Rice is classified the same as soap. Starch is classified in fifth class in carloads and third class in less than carloads. Cereal products are sixth class in carloads and fifth class in less than carloads. Coffee greeen is fifth and fourth; coffee roasted fourth and third; canned goods fifth and third. So you practically find none of these articles, with the single exceptiion of rice, rated as low in the Southern Classification as soap. Here are the commodity rates from Cincinanti to Dallas, which represents the Texas common points. I would like to read these.

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Mr. MAXWELL: We make the objection of irrelevancy. There seems to be no justification for this. We simply want to make the objection.

Mr. MACDONALD: I would say to partially uphold the connection that soap should take a minimum rate among manufactured articles that that is recognized in other sections of the country. Cincinnati to Dallas is 61 cents on soap in carloads; candles, 77; rice, 61; starch is 70-higher than soap; sugar is 60, a cent lower than soap; green coffee is 77; canned goods 55. I know I have had that question of canned goods up and it has been explained to me that the demand for that sort of thing down there is large and they thought the minimum rate was justified. On fish it is 77 cents. From Cincinnati to San Francisco the rate on soap is 75 cents; candles $1.00. Rice takes a lower rate. It is not published out of Cincinnati, but it has a 60 cent rate out of Chicago, which indicates a very much lower basis. On sugar it is $1.00. Coffee, green, it is 80 cents—higher than soap; glucose 85 cents—higher than soap; dried fish $1.20. In the South I desire to illustrate to you that while they are classified at sixth class, they do with soap what

they do with nearly all of these other commodities,—
623 give them a commodity rate to all junction points, or jobbing centers. That is illustrated here. For instance, the rate on soap from Cincinnati to New Orleans in sixth class is 39; commodity rate 27. The rate from Cincinnati to Atlanta, sixth class is 46; commodity 32 cents. Now, these Atlanta rates I would like to call attention to by way of comparison. Soap takes a rate of 32 cents to Atlanta and candles 81 cents, which is a marked difference, more than between the classes. Starch is 40 cents—higher than Soap. Sugar is 37, higher than soap. Coffee, green, is 39,—higher than soap. Canned goods, 45 cents in carloads and 56 cents in less than carloads—very much higher than soap. Glucose is 32 cents, the same as soap. In the rates from Cincinnati to New Orleans, starch is the same as soap. Coffee is 39 cents against soap 27 cents. Canned goods take the same as soap. That is all I have here I believe.

Mr. WARRINGTON: We offer that in evidence in illustration of the witness testimony on that subject.

The CHAIRMAN: It is received subject to the objections.

(The same is hereto attached and marked Exhibit No. 2—Macdonald.)

Mr. WARRINGTON: What have you to say of Missouri River and St. Paul traffic under this classification?

624 Mr. MACDONALD: The change in the Official Classification, in Official territory, had the effect of advancing our rates and not advancing the rates of manufacturers at Chicago and St. Louis. To make that clear to you, formerly our competitors there in Chicago—it is unnecessary for me to name them, as there are a number of large soap manufacturers there—could ship to the Missouri River in carloads at a rate of 27 cents per 100 pounds. The rate from St. Louis was 22 cents; now to that 22 cents we must add the local rate from Cincinnati, in Official Classification to St. Louis. Formerly, under sixth class, it was 12 cents, making our rate to the Missouri River 34 cents, as compared with Chicago's 27 and St. Louis' 22. When the Official Classification was changed our rate was advanced to St. Louis to 15 cents; so that our rate to the Missouri River is now 37 cents, while Chicago and St. Louis, operating under the Western Classification in that territory, are not advanced and have the same rate as before. That is, there is a discrimination of 3 cents a hundred, 3 cents greater difference between our rate and Chicago and St. Louis than there used to be. Our rate from cincinnati to St. Louis is 15 cents where it used to be only 12 cents.

625 Mr. WARRINGTON: What have you to say of St. Paul and Minneapolis?

Mr. MACDONALD: The effect as to St. Paul and Minneapolis was very much harder on us than the effect at the Missouri River. There is a peculiar condition in regard to rates from Cincinnati to St. Paul and Minneapolis. They have been reasonably favorable from Cincinnati, but there was good reason for it; there is Lake competition by way of Cleveland and Detroit, and there is the Soo Line or Canadian Pacific which gets into St. Paul and Minneapolis from the

East and protects the Official Classification figures right up to Minneapolis. There are car ferry lines operating from the eastern side of Lake Michigan to points up north of Chicago, which would protect the Official Classification that far. So this condition led up to one by which the through tariffs published from Cincinnati up to St. Paul and Minneapolis were on the Official Classification basis. Formerly our rate to St. Paul and Minneapolis was sixth class carloads, 25 cents, Chicago having a rate of 20 cents. Under the new classification we are advanced from 25 to 33½, or 8½ cents a hundred. Where formerly there was but a difference of 5 cents between the rate to St. Paul and Minneapolis between Cincinnati and Chicago, there is now a difference of 13½ cents. There is more
626 in that statement than appears on the surface. It is the fact that these roads in the East, roads down in New York, have taken an action that has had the effect of advancing rates in territory over which they have no control.

Mr. WARRINGTON: What do you mean by that?

Mr. MACDONALD: Well, I mean that only 3 cents of that advance is accounted for between Cincinnati and Chicago and the rest, or 5½ cents, is advanced on the Western road, which has no desire to advance rates.

Mr. WARRINGTON: Now, I wish you would turn to the Buffalo meeting and to the reduction of 20 per cent on less than carload lots and tell us how generally the soap interests were represented at the Buffalo meeting.

Mr. MACDONALD: Mr. Colgate of Colgate & Co. was there and carried with him the proxies representing nearly all of the large manufacturers in the East.

Mr. COLSTON: Were you there?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: Give the date of that meeting.

Mr. MACDONALD: It was in January. I do not think I
627 recall the date. It may have been the 23d.

Mr. MAXWELL: Was this the soap combination meeting?

Mr. MACDONALD: No, sir. It was a meeting of these men engaged in that business.

Mr. WARRINGTON: Go ahead.

Mr. MACDONALD: Of the manufacturers from Chicago, Jas. S. Kirk, Swift & Co. and Fairbanks & Co.; from Jackson, Michigan, the Central City Soap Co., also carrying the proxy of the Detroit Soap Co. of Detroit; Walker & Co. of Pittsburg by proxy; Schultze & Co. were represented by proxy and ourselves and the Buffalo manufacturers. There are I think three soap manufacturers in Buffalo.

Mr. WARRINGTON: That meeting resulted in this reduction of 20 per cent. in less than carloads?

Mr. MACDONALD: It resulted in Mr. Jennings being appointed a Committee to represent the meeting and present the views of that meeting to the joint meeting of shippers and traffic managers down at New York, and they were presented there by Mr. Jennings. I also presented an argument there for our company.

Mr. COLSTON: Then there was no action taken at that meeting.

628 Mr. MACDONALD: Yes, sir; by which a Committee was appointed to draw up resolutions and Mr. Jennings was appointed to present those resolutions to the New York meeting.

The CHAIRMAN: I understand that Mr. Jennings attended the New York meeting?

Mr. MACDONALD: Yes, sir; he did.

The CHAIRMAN: And the result of that meeting was a reduction of 20 per cent.?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: Was there any request for a 20 per cent. reduction in the sense that you asked for a 20 per cent. reduction and would be satisfied with that, or anything of that kind?

Mr. COLSTON: Don't you think you had better let him state that.

Mr. MACDONALD: There was not. Among other arguments which were presented and which I had heard generally presented by other interests against changes in classification was as to the widening of the difference between carloads and less than carloads.

Mr. COLSTON: That was urged?

Mr. MACDONALD: Yes, sir; and that was one of our ob-

629 jections; perhaps not the best objection we urged.

Mr. COLSTON: Just state what you said?

Mr. WARRINGTON: What were your objections, briefly?

Mr. MACDONALD: They covered a great deal of what I have given here this morning; that we thought that transportation charges had been about the only prominent element in the soap business that had been advanced; everything else had gone down. Rates had gone up and the competition had increased. The prices of soap had gone down and the competition had increased and that our transportation rates were higher than in 1887.

Mr. WARRINGTON: Then you went over all these grounds substantially?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: What I wish to direct your attention to is how the 20 per cent. reduction came about, whether it was requested by the soap men?

Mr. MACDONALD: No, sir; it was not, any more than we claimed that there was too wide a difference between carloads and less than carloads.

Mr. WARRINGTON: Have you any charts which will aid you in illustrating the effect of that 20 per cent. reduction?

Mr. MACDONALD: I have.

630 Mr. WARRINGTON: Will you please show them to us.

Mr. MACDONALD: Yes, sir.

Commissioner CLEMENTS: What body of railroad men did you have that meeting with?

Mr. MACDONALD: I think the call for the meeting was issued to all the Trunk Lines and C. F. A. roads. There was nearly a full representation of Trunk Lines and some C. F. A. roads were there; those gentlemen sat as a committee and heard the arguments.

Mr. WARRINGTON: Now, under whose direction was this map made (exhibiting)?

Mr. MACDONALD: It was made under my direction.

Mr. WARRINGTON: From what data?

Mr. MACDONALD: From rates which we had asked for from the different railroad companies and of which we hold either the tariffs or letters confirming same. This is to show the effect on less than carload rates only out of New York City of taking 20 per cent. off third class rates.

Mr. COLSTON: Will the stenographer read the answer.

The answer was read.

631 Mr. MAXWELL: We wish to object to this picture upon the ground that it is not relevant testimony. There is no misunderstanding as to the position we take, that this proceeding has no significance except as preliminary to a judicial proceeding. We object to the evidence as not competent.

Mr. COLSTON: You will bear in mind that this is not in this complaint at all, as I understand it. I understand they are now undertaking to show that they did not get any benefit of this 20 per cent. reduction, and if I apprehend what is meant by that, that there are certain rates, local rates, out of New York—Mr. Warrington alluded to it yesterday, for instance to Herkimer, one point he mentioned, that gave New York soap makers an advantage over soap makers in Cincinnati. I do not find anything of that in the complaint. And if a fact, the companies we represent, except the New York Central, are not responsible for, and I do not see how this fight can be mixed up with that. That is an entirely distinct matter that would affect roads up there around New York. I do not think we ought to complicate this inquiry.

The CHAIRMAN: We will accept it. It seems to us competent to show what the actual effect is of the application of the present classification. Proceed, Mr. Macdonald.

632 Mr. MACDONALD: I think it may be clearer as to this map to state the reason for it; that is, that in the scale of rates out of New York there is a less difference between fourth and third class than in the scale out of Cincinnati. Now, this map illustrates the effect of taking 20 per cent. off of third class rates out of New York. Take first here into New England. You find that you can go clear up to Portland, Maine and Rochester, New Hampshire and up here to North Adams.

Mr. MAXWELL: Have it marked as an exhibit.

Commissioner YEOMANS: It will be Exhibit No. 3.

(The same is hereto attached and marked Exhibit 3-Macdonald.)

Mr. WARRINGTON: It is a chart to show that the reduction of 20 per cent. over the territory described upon it restores the dealers there to the fourth class.

Mr. MACDONALD: You see that is practically the whole of New England. That is, the New York soap maker can reach practically the whole of New England at the old rates. That is, 20 per cent. off

of the present third class rate reduces it back to the old rate, or fourth class.

The CHAIRMAN: It is covered by the 20 per cent. reduction?

Mr. MCDONALD: Yes, sir; it is covered by the 20 per cent.
633 reduction. I might state that the distance from New York to Portland, Maine is 348 miles. You can go that far without any change in rates in less than carloads. Out here at Herkimer, you come up through a very rich territory, 229 miles and the New York soap manufacturer has no advance on the less than carload rate. Now, here on the New York, Ontario & Western and the Erie roads the advance in rates start, just about as near New York as Cincinnati, perhaps a little nearer, but the advance in rate is not so great in this blue territory. For instance out here to Sydney, 225 miles on the New York, Ontario & Western and at Binghamton on the Erie the advance is 2 cents, while at Deposit, 177 miles, there is only one cent advance. When we get down into this territory, along the Baltimore & Ohio and Pennsylvania Railroads leading from New York to Washington, the rates have been restored, except the classification to Wilmington and vicinity, which we have indicated by that blue mark. The rate to Washington has been restored and the rate to Baltimore and down into New Jersey, on the Central Railroad of New Jersey they are restored to the old figure. So as a whole the yellow territory indicates no advance in rates, that is, the territory in which the New York manufacturer is still able to ship
634 in less than carload lots at fourth class, the old rate. This blue is the one-cent-advance territory. We have not taken the whole section into our map and are perfectly willing to admit the advance is greater. My recollection is that the two cents advance of the New York Central, for instance extends out to Batavia, New York; and to Buffalo, New York there is a three cent advance.

Mr. WARRINGTON: Now this map (referring to Exhibit No. 4—Macdonald) shows the comparison between what you have just described in Exhibit 3 and what we will offer as Exhibit 4, and I will ask you whether this was made under your direction, as was the other?

Mr. MACDONALD: It was, and is drawn on the same scale as the other.

Mr. MAXWELL: We submit our objection to this as incompetent testimony, not bearing upon any issue presented by the petition in this case.

The CHAIRMAN: We understand it is received subject to objection.

Mr. WARRINGTON: Describe it.

Mr. MACDONALD: Here is Cincinnati and these are the different lines of railroad leading out of Cincinnati, the yellow color in this map representing the same condition as the yellow color in
635 the other; that is, the no-advance in rates territory, where the 20 per cent. reduction in classification had the effect of putting rates back to fourth class. There is no contention as to carloads on this.

Mr. WARRINGTON: Is that drawn on the same scale?

Mr. MACDONALD: I stated that they are drawn on the same scale.

The CHAIRMAN: They are designed to show the territory in which the 20 per cent. reduction results in no advance in the less than carload rate; while the other colors show what the amount of the advance is, yellow indicates the territory where it results in no advance?

Mr. MACDONALD: Yes, sir. Taking here the minimum distance, we find in coming out here on the Big Four road that our rate advances 1½ cents in 41 miles, extending perhaps to a maximum of 65 miles. I have just made an average in my mind, and believe that the area would not extend 58 miles around Cincinnati where the reduction of 20 per cent. in third class rate takes it back to fourth. You will notice how quickly the advances come with us. It is very interesting to notice that:—91 miles, 3 cents advance; 83 miles, 3 cents; 76 miles, 3 cents; 73 miles, 3 cents, and differences of
636 smaller amounts indicated below. Here in this very large territory (pink) is 3½ cents advance, the distance from Cincinnati being 112 miles and in one case here less than 100 miles where there is 3½ cents advance. Out here in this larger territory there is 3 cents advance. Then when we go into Michigan we get 3½ cents advance and to Ashtabula we get 3½ cents. What we emphasize is this local condition down here. There is one explanation that I want to make to this. We find that in going from Cincinnati up to Huntington, where there is river competition, the 20 per cent. reduction puts the rates back to the old figure.

The CHAIRMAN: That means that 20 per cent. reduction gives you practically fourth class rates in a radius of less than 100 miles of Cincinnati?

Mr. MACDONALD: In a radius of less than 60 miles; perhaps not 50 miles.

The CHAIRMAN: Whereas you say the New York manufacturer gets, as a result of the 20 per cent. reduction, fourth class rates practically all over New England; on the New York Central as far as Herkimer, and in New Jersey and that section?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Every place where he gets canal or water competition.

637 Mr. WARRINGTON: That is Mr. Maxwell's explanation. We deny that.

Mr. MACDONALD: We desire here to present another map.

Mr. WARRINGTON: Was it made in the same way?

Mr. MACDONALD: Yes, sir; drawn to the same scale; this being drawn with the exclusive idea of indicating the Cincinnati territory to which there has been no advance in less than carload rates and the territory around New York of which the same is true around New York; and with the population roughly figured out.

The CHAIRMAN: Designed to show the comparative size and shape of the territory which in the case of New York and Cincinnati, respectively, get fourth class rates by reason of the 20 per cent. reduction?

Mr. MACDONALD: Yes, sir.

Mr. MATTHEWS: What are those red discs?

Mr. MACDONALD: They are towns of considerable population. Around Cincinnati there are practically but three such towns, Cincinnati, Hamilton and Dayton.

Mr. MATTHEWS: Where did you get the populations?

Mr. MACDONALD: Out of Rand & McNally.

638 Mr. MAXWELL: It is understood that we make objection to this.

The CHAIRMAN: Yes, sir. We will take a recess until 2 o'clock.

At 12:30 a recess was taken.

639 After Recess.

2 O'CLOCK P. M.

The CHAIRMAN: You may proceed, Mr. Warrington.

JOHN M. MACDONALD (resumed the stand.)

Mr. WARRINGTON: What, if any, of the exhibits which you offered show the rates as well as the other features you have already stated?

Mr. MACDONALD: Why, it ought to be made clear in connection with these maps that on each red dot, which represents the town, the mileage is given in red, then the name of the town, and underneath appears three figures which show the fourth class rate, the third class rate and 20 per cent. below the third class rate. Those three figures are given under each town, so the actual rates themselves appear on these maps. The same is true of the eastern.

Mr. WARRINGTON: What have you to say on the subject of distributing stations?

Mr. MACDONALD: We do not maintain anything which could be called a distributing station. We have men who are exclusive dealers in our soaps in the eastern cities, like Boston, New

640 York and Philadelphia and in Chicago, but we do not use these for distributing our goods, with the exception of Boston, and in the case of Boston we do not distribute from there with the idea of saving any freight. In fact, our calculations seem to indicate that our present method costs more. Our object in reshipping from Boston is to gain time. In shipments we find that a retail grocer ordering from Boston can have his soap at destination in a couple of days. If we made a less than carload shipment from Cincinnati, it would take two or three weeks. So we found it necessary to make reshipments from Boston, be we are not able to figure that it is any cheaper than shipping in less than carload lots from Ivorydale. This is the only place we do that reshipping at all.

Mr. WARRINGTON: Something has been said about mixed carload lots in that way obtaining carload rates. State whether or not that is practicable in your business?

Mr. MACDONALD: It is not to any perceptible extent at all, for the reason that the same man would not buy the two articles which we make. For instance, it is the wholesale grocer that buys our soap and it is an entirely different class of trade that buys our glycerine—

even if they were in the same classification, and they are not.
641 Even in the case of candles the wholesale grocers, though buyers of candles, are not large buyers. In the case of red oil, the wholesale grocer would not buy red oil at all. It would be no advantage to us to mix those to make up a carload. I am presuming that it is thoroughly understood what the rule of the classification is in that respect; that is, articles taking the same carload classification may be mixed in carloads, each article taking the carload rate of the class. That means that if you have 10,000 lbs. each of three different articles classified in the 5th class, carload lots, you can put those in a car, and the minimum being 30,000 pounds, you get the carload rate on it.

Mr. WARRINGTON: Why can you not use carload rates by sending carloads to every place you distribute soap? Is that feasible?

Mr. MACDONALD: We are limited in that to the amount bought by one man. We have to sell the quantity of soap to make up the car. If we go into a small town where we can only sell 5 boxes of soap, we must pay the less than carload rate or if we sell anything less than a car.

Com'r CLEMENTS: Is that rule that you speak of—does it apply only as to that terrtiory?

642 Mr. MACDONALD: It is in that Official Classification but I think is not recognized by the Western Classification.

Mr. WARRINGTON: What class if glycerine in?

Mr. MACDONALD: Glycerine is in second and third classes in cans; less than carloads, second class, and third class in carloads; when it is in barrels or drums it is fourth class in carloads and third class in less than carloads, which prevents mixing with soap.

Mr. WARRINGTON: Now, I wish you would tell the court about this practice of net weights, that has been mentioned in the depositions and otherwise at the bar.

Mr. MACDONALD: When I came with our company in 1885 it was the practice of all railroads at Cincinnati to accept our soaps at net weights, and they continued to do so until 1889. We did not feel at that time and do not feel now that that was a discrimination in favor of soap or giving soap any undue preference, but we felt that it was a recognition on the part of the carriers that the classification they had made on soap was not as low as it should be and that this net weight practice was inaugurated to equalize what the rate should have been. The method, as a general proposition,
643 may not have been the proper one, but it was not extended to us alone, but was extended to many of the soap manufacturers, as was shown in our former case and also in this case—practically all of our competitors.

Mr. WARRINGTON: What, if any, secrecy was there as to that practice?

Mr. MACDONALD: There was no secrecy at all. In fact, our contention with the Cincinnati roads when the practice was withdrawn was supported by expense bills showing shipments out of other places at net weights.

Mr. WARRINGTON: What, if anything, had the soap manufactur-

ers to do with the classification of toilet and laundry soap or high priced and low priced soaps in the same class or category? What brought that about.

Mr. MACDONALD: That was brought about probably primarily——

Mr. COLSTON: "Probably," did you say?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: He said "primarily." Well, go on.

Mr. MACDONALD: By an order of this Commission in the case of the Beaver Soap Company brought—it was interesting
644 about that case that the Beaver Company made a grade of tar-soap not similar in character to the ordinary toilet soap. It was packed in a paste-board box and to that extent was like a toilet soap, and it was possibly the agitation in that case that influenced the railroads, but we have always felt that the controlling influence——

Mr. WARRINGTON: I want to know whether the soap manufacturers did that or the railroad companies?

Mr. MACDONALD: The railroad companies did it as a voluntary act.

The CHAIRMAN: How long have toilet soaps as well as laundry soaps been in the same class?

Mr. MACDONALD: I think I could not answer that definitely. It is my impression that it was along shortly after our own order that that Beaver Soap Company case was tried—probably in 1891—and the change of classification was made after that.

The CHAIRMAN: And for a number of years there has been no distinction between toilet and laundry soaps?

Mr. MACDONALD: No distinction.

Mr. WARRINGTON: Compare that practice or classification briefly with the Western?

645 Mr. MACDONALD: The western roads make the difference a difference in price. They require you to stamp the invoice value on the bill of lading. When they originally started the practice, the difference was as between 12 cents a pound and those over that. They have since changed it to 10 cents a pound. Anything 10 cents a pound or less in value takes a certain class. If it is over that, it takes a higher classification.

Mr. COLSTON: You mean that they divided on 10 cents on the classification?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: What is the average value or price of competitive or common soaps?

Mr. MACDONALD: In our business, our actual business, it is a very small fraction less than 3 cents a pound—about 2.96.

Mr. WARRINGTON: I did not understand that. I will ask you to repeat it.

Mr. COLSTON: Let the stenographer read it.

The stenographer read the answer as follows:

"In our business, our actual business, it is a very small fraction less than 3 cents a pound—about 2.96."

646 Mr. WARRINGTON: What, if anything, happened in respect of rates or classification, if you know, between January 1st and January 15th, 1895?

Mr. MACDONALD: The classification which was in effect at the time classified soap as 5th class or, in other words, there was an effort to advance it from 6th to 5th class. In our business we never paid this advance. Our soap was all accepted by the railroad companies at the 6th class rate during that period.

Mr. MATTHEWS: Did the effort cease January 15th?

Mr. MACDONALD: The classification was changed back at that time.

Mr. WARRINGTON: Mr. Macdonald, something has been said about a railroad at the Procter & Gamble factory. In the first place, tell us where the Procter & Gamble Company's factories are?

Mr. MACDONALD: They are located at Ivorydale, Ohio, which is in Hamilton County, about 7 miles north of Cincinnati.

Mr. WARRINGTON: How do you mean north of Cincinnati—of the central or business portion?

Mr. MACDONALD: Well, from the center part of Cincinnati.

647 Mr. WARRINGTON: Does Ivorydale adjoin Cincinnati?

Mr. MACDONALD: Immediately, yes sir.

Mr. WARRINGTON: Now, describe this railroad. Tell all about it,—first, what is its name?

Mr. MACDONALD: The Ivorydale & Mill Creek Valley Railroad Company.

Mr. WARRINGTON: Who owns that railroad?

Mr. MACDONALD: It is owned by individuals, but it is practically owned by the Procter & Gamble Company.

The CHAIRMAN: When was the corporation formed?

Mr. MACDONALD: In 1890.

The CHAIRMAN: When was the road built?

Mr. MACDONALD: Prior to that, I think. I can make a statement that will make all that clear to you. When we moved to Ivorydale we soon found that we would want a good many tracks there and that it would be necessary for the railroads either to make elaborate provision to take care of our businesss or we would have to take care of it for them.

Mr. WARRINGTON: What is the acreage of that place—what is the acreage of your place out there Is it a front foot lot 100 by 50, or what is it?

Mr. MACDONALD: It is a great many acres—I have forgot-

648 ten how many.

Mr. WARRINGTON: How many buildings have you?

Mr. MACDONALD: I think somewhere between 30 and 40. It may be more than that.

Mr. WARRINGTON: How is the business done between these buildings—how are the materials carried from one building to another?

Mr. MACDONALD: By rail.

Mr. WARRINGTON: What is the reason for that?

Mr. MACDONALD: Because the distances are great. It is a great deal better and cheaper way of transacting the business than by any other means of transportation.

Mr. WARRINGTON: How long has that been so?
Mr. MACDONALD: Ever since the factories were built there.
Mr. WARRINGTON: How many miles of railroad has this company on the property of the Procter & Gamble Company?
Mr. MACDONALD: Seven miles.
Mr. WARRINGTON: Is that in one continuous line, or otherwise? Describe it?
Mr. MACDONALD: It is in the shape of switches. It would not be in one continual line.
649 Mr. WARRINGTON: How many railroads do you connect with—I mean regular railroads?
Mr. MACDONALD: With the C. H. & D. on one side and the three C's and St. L. and B. & O. S. W. on the other. We have our independent connection with each one.
Mr. WARRINGTON: How many locomotives have you?
Mr. MACDONALD: Two.
Mr. WARRINGTON: How many cars have you?
Mr. MACDONALD: We own 75.
Mr. WARRINGTON: What kind?
Mr. MACDONALD: Tank cars, rack cars, a few box cars and a few miscellaneous cars.
Mr. WARRINGTON: You say you own that many. Have you control of any others?
Mr. MACDONALD: There are 78 cars, we have on them the name of the Procter & Gamble Company and an advertisement of Ivory soap, but they are not operated by this railroad company. They are operated by what is known as the Commerce Despatch Line.
Mr. WARRINGTON: What is your relation to that company,
650 to the work or traffic that the company does?
Mr. MACDONALD: I am president and general manager.
Mr. WARRINGTON: How long have you been such,—several years?
Mr. MACDONALD: Several years, I could not state exactly.
Mr. WARRINGTON: Now, tell the court as briefly as you can what work and service that company does, or that you do with these instruments that you have described?
Mr. MACDONALD: We take the freight coming in from the switches of the carriers at Ivorydale and place it at the points in Ivorydale where it is wanted, do all the switching on it and all the unloading. On out-bound business, we have a warehouse 600 feet long, and our own men do the loading of our soap into the cars and make the bills of lading. We give the railroad companies office rent in our grounds free and we do the switching to them there. This is a necessary arrangement, for this reason: There are three carriers there accepting freight from us, and it would be very expensive and very inconvenient for those carriers to come in and try to do that work themselves as they would be obliged to do if we did not furnish the service. Our engine can haul a car for the Big Four and B. & O. S. W., and the C. H. & D. in one train, whereas if their own en-
651 gines were doing it, they would each have to perform the same service at the same expense. This seemed the most logical and economical thing to do under the circumstances.

Mr. WARRINGTON: How long has this practice been carried on, this method of handling the in-bound and out-bound freight?

Mr. MACDONALD: Ever since we have been at Ivorydale.

Mr. WARRINGTON: Has there ever been any complaint about it.

Mr. MACDONALD: No, sir.

Mr. WARRINGTON: Has there been anything secret about it?

Mr. MACDONALD: No, sir.

Mr. WARRINGTON: How many railroad companies participate in the service that your company renders?

Mr. MACDONALD: Practically every railroad in Official Classification territory.

Mr. WARRINGTON: How do you make that out?

Mr. MACDONALD: The allowance made us for this service is taken off the face of the billing and in that way pro-rated out of each rate on our business outbound.

Mr. WARRINGTON: What have you to say of the reasonableness or otherwise of the charges made by your company for the
652 services that you render.

Mr. MACDONALD: Perhaps I better first state what we receive, had I not?

Mr. WARRINGTON: Go ahead.

Mr. MACDONALD: We receive on inbound business $2.50 per car, which on the weight of the cars we receive is rarely a cent per hundred pounds; on the outbound business to Central Freight Association territory we receive 2 cents a hundred and to Trunk Line territory we receive 1½ cents a hundred: When you reduce these charges to per car, being in the case of the 2 cents a hundred five to six dollars a car and in the case of 1½ cents, four dollars a car. These are very reasonable charges compared with similar charges at other places. In my freight work I come in contact with switching charges in other cities, and I know them in very many instances to be much in excess of this for similar service.

Mr. WARRINGTON: Something was said yesterday about the C. H. & D. charge, the proportion you got and the part that company got. Tell the Commission about that?

653 Mr. MACDONALD: The figures, as I recollect them—and I hope you will correct me if I am mistaken—were that out of a rate we paid the C. H. & D. road three sixty four to Toledo we received one and one-half. You will notice that the C. H. & D. in that example, they have selected a long distance haul to New York where the C. H. & D. proportion is very small. It is perhaps fair to know that the fifth class rate to Toledo is 12½ cents a hundred and if we ship a carload of soap to Toledo we could get two cents and the C. H. & D. ten and a half cents.

The CHAIRMAN: Was the factory of Procter & Gamble formerly in Cincinnati proper?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: When did they take the location at Ivorydale?

Mr. MACDONALD: We started to build there I think in 1885 and completed our factories and started to do business regularly about 1887.

The CHAIRMAN: In 1887 your business had been transferred to Ivorydale?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: But this railroad company was not organized or this railroad built until three years after that?

654 Mr. MACDONALD: No, sir; although the matter was handled in very much the same way; we were allowed by the railroad companies money for doing that service as the Procter & Gamble Company just the same as we were afterwards as the railroad company.

The CHAIRMAN: Is your relation to the other roads practically that of an initial carrier?

Mr. MACDONALD: In many respects, yes, sir.

The CHAIRMAN: Are you named on the tariff as one of the parties to the joint tariff?

Mr. MACDONALD: No, sir; we are not.

The CHAIRMAN: So there is nothing on the face of the rate sheets to show that there is any such railroad company as yours?

Mr. MACDONALD: No, sir.

The CHAIRMAN: Or any such service performed?

Mr. MACDONALD: No, sir.

The CHAIRMAN: The tariffs in use show the rates from Ivorydale to destination?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: The joint tariffs, I am speaking of?

655 Mr. MACDONALD: Yes, sir.

The CHAIRMAN: In all directions?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: But in point of fact you say you get $2.00 a car?

Mr. MACDONALD: $2.50 a car.

The CHAIRMAN: On incoming freight?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: And on outgoing freight 2 cents a hundred when the destination is in Central territory and 1½ cents when in Official territory.

Mr. MACDONALD: Yes, sir. You understand this is the result of a joint agreement between ourselves and the initial carriers. The amount is taken off the face of the billing. If the rate is 15 cents, 2 cents is taken off of the 15 and it is made 13, and 13 cents is prorated among the other carriers.

Mr. MATTHEWS: With what initial carriers is this agreement made?

Mr. MACDONALD: The C. H. & D., the Three C.'s and St. L. and the B. & O. S. W. The Erie is also a party to that arrangement.

656 Mr. WARRINGTON: In your connection with this railroad and in your handling of the freight Department of the Procter & Gamble Company, have you or have you not had opportunities to become familiar with railroad materials to any extent,—rails, cars and the like?

Mr. MACDONALD: We have 7 miles of track and the equipment which I have already mentioned, and it has always been my duty to buy these cars and locomotives and rails and such materials as were needed.

Mr. WARRINGTON: Do you know those values in a general way the prices—I mean of rails and cars and ties and locomotives?

Mr. MACDONALD: Yes, sir; in a general way.

Mr. BAYLESS: At what time are you asking about?

Mr. WARRINGTON: For now and for years back.

Mr. BAYLESS: Your question did not fix any time.

Mr. WARRINGTON: I asked if he knew them, and that question would embrace now. Now, Mr. Macdonald, what, if any, investigation have you made for ascertaining the rates per ton per mile, the cost per ton per mile, the tonnage of trains hauled, the cost
657 of men or crews to handle the trains from the present back to 1887. That is a long question and I will ask the stenographer to read it. I want you to answer it as directly as you can.

The question was repeated by the stenographer.

Mr. MACDONALD: I have made a very exhaustive study of the statistical reports of the Commission, which give all of this information and am prepared to show a chart here with the figures and with the information as to how I obtained them.

Mr. WARRINGTON: Let us see the chart.

The chart was produced by the witness, which is marked Exhibit No. 6, Macdonald.

Mr. WARRINGTON: Now, tell what it is.

Mr. MACDONALD: First, as to these figures in blue over here (indicating), they have no part in the rest of the railroad statistics except to show the rates on soap expressed in percentages, the price of soap expressed per box and the price of tallow for these same series of years. I am prepared to swear to the correctness of those, making the same limitation I did before, that the advance in net rates
658 is appoximately taken at one-sixth. In regard to these other statistics, we have a column showing the rate per ton per mile, cost per ton per mile, cost of running all trains one mile, earnings per freight train, mileage of freight train, cost of running freight train one mile, tons to a train, employés per hundred miles of road, and average daily compensation of the train men. These statistics are arrived at in this way: In some instances here we have given all the United States. For instance, in the case of each rate per ton per mile we do that in order to go back to 1887, the grouping of territory having started in 1890. I found on making a study of these statistics that the Commission in 1890 had made a certain grouping of territory. I found that Groups 1, 2 and 3 would include all territory in the Official Classification, covered by the Official Classification, with the exception of a small portion of Virginia—there being only a small portion covered by the Official Classification—West Virginia and Illinois. It did not seem to be an important factor to take these in for the reason that in Illinois we have the Western Classification, which is used probably more than the Official, and

the Illinois State Classification, and we have the enormous
659 North and South business from Chicago to New Orleans.

Mr. MATTHEWS: What classification is that?

Mr. MACDONALD: The Southern. It seemed quite proper that Illinois be left out of these groupings, and the business in West Virginia as it is affected by the Official Classification is not a big item. So in these statistics we have given here Groups 1, 2 and 3 consolidated; that is, regarding them as one group, and regarding them as the territory of the Official Classification. As our authority for these figures, I would say we prepared this charge as to the headings, and the figures are verified by the reports of the Commission. They are from your statistical report. The first column here is the rate per ton per mile, starting at 1.003 in 1887 and falling to the average which has just been computed for the fiscal year ending June 30, 1899 of .724.

Mr. MAXWELL: That is for all the United States?

Mr. MACDONALD: For all the United States. That is to give the fall as on the other Chart from 1887 down to the present time, it being impossible for us to take our groupng back of 1890. We have no statistics.

660 Mr. MAXWELL: We object to this on the ground that it is not confined to the territory involved in this controversy.

Mr. WARRINGTON: We are going to give that in the next breath. We want it for a comparison.

The CHAIRMAN: It may be received subject to the objection made.

Mr. MACDONALD: In the next column we show the rates per ton per mile in Groups 1, 2 and 3 consolidated and regarded as one group. To meet what Mr. Maxwell said, it is interesting to note that the percentage decreased in all the United States from 1887 down to the present time 27 per cent. The decrease from 1890 for all the United States down to the present time is 23 per cent., whereas the decrease in his own territory, Groups 1, 2 and 3 is 27 per cent. from 1890 to the present time.

Mr. MAXWELL: That is the rate per ton per mile?

Mr. MACDONALD: Yes, sir; in the territory in which these carriers operate. It has dropped 27 per cent. from 1890 up to 1899 as compared with 23 per cent. in the whole United States. So that goes to show our fairness in these statistics.

661 Mr. MAXWELL: If the gentleman would kindly confine himself to testimony——

The CHAIRMAN: We should avoid, Mr. Macdonald, characterizing the facts that you mention.

Mr. WARRINGTON: Well, we will omit that.

Mr. MAXWELL: We do not want to interject, but according to my view the gentleman entirely misconceives, the conclusion to be drawn, and we do not want to be making aguments as we go along.

Mr. MACDONALD: To get at what these columns indicate to us, the average rate of all articles, or the average rate per ton per mile of Groups 1, 2 and 3 has dropped from 1890 to the present time 27 per cent., that is, the average of all articles has dropped that much.

The soap rates; as I have already shown in my testimony are today 120 per cent. as compared with 100 per cent. in 1887 on carloads and 138 per cent. on less than carloads as compared with 100 per cent. in 1887.

Mr. WARRINGTON: In other words, all rates have gone down as you describe and soap rates have gone up?

Mr. MAXWELL: That is not what he says. The average
662 rate received, he says.

Mr. MACDONALD: The average rate received from all articles has gone down, whereas the soap rate has gone up. Our next columns, we are sorry to say, are incomplete—the cost per ton per mile. We found on examination of the statistics that these figures were only given in the statistical reports up to 1893 as divided between freight and passengers. After that time they were consolidated. In 1888 the cost per ton per mile for all the United States was .0630 and in 1893, where our statistics end, they drop to .0579. In keeping these in Groups 1, 2 and 3 we have it in 1890 at .0536 and dropping in 1893 to .0508.

Mr. WARRINGTON: What have you that in any way would aid in supplying the omission you have mentioned; that is, since 1893?

Mr. MACDONALD: The only factor in the statistics now is the cost of running all trains one mile, and that is not grouped. It is for the whole United States. It includes passenger trains and freight trains. We find that whereas it cost 96 cents in 1888 to run all trains one mile, today in 1899, it costs 98 cents. I am leaving off the fractions.

663 Mr. WARRINGTON: What was the tonnage of trains?

Mr. MACDONALD: Tons to the train in groups, 1, 2 and 3 in 1890 were 207.16. That had increased in 1899 to 292.51; or to consolidate this last column with the cost of running a train one mile in 1890, it cost 96 cents to run a train of 207 tons one mile, and today it costs 98 cents to run a train of 292 tons one mile; of course bearing in mind in that connection of running a train one mile that the passenger trains are in there.

Mr. WARRINGTON: Is there any way to separate that that you know of so as to distinguish freight from passenger traffic?

Mr. MACDONALD: We have here the earnings per freight train mile.

Mr. WARRINGTON: Tell us about that.

Mr. MACDONALD: We have the earnings per freight train mile of freight trains for Groups 1, 2 and 3 consolidated——

Mr. MAXWELL: Excuse me. I do not understand whether you have told us what Groups 1, 2 and 3 are.

Mr. WARRINGTON: He has, but tell it again, Mr. Macdonald.

Mr. MACDONALD: If I had the Commission's map here—they have made a grouping of territory for statistical purposes.

664 Mr. WARRINGTON: You are referring to the Commission's grouping.

Mr. MACDONALD: Yes, sir; Group 1 is the whole of New England; Group 2 takes in New York and Pennsylvania; Group 3 takes in the Central portion, leaving out West Virginia, Illinois, and a little of Virginia, as I have explained; but I think it is very representative of

the Official Classification territory. Here is the earnings per freight train mile consolidated for Groups 1, 2 and 3, and taking them as one group, the earnings in 1890 were $1.70, although the rates dropped from 1890 from .082 to .0595, the freight train in 1899 was earnings $1.75 per freight train mile. That is, although there had been a reduction of 27 per cent. in the rate per ton per mile, they were able to earn per freight train mile 5 cents a mile more. We have here the cost of running a freight train one mile consolidated for Groups 1, 2 and 3 as far as those statistics came down, to 1893, indicating that the heavier train for that time had made no perceptible increase in the cost.

Mr. WARRINGTON: Proceed and describe the rest.

665 Mr. MACDONALD: We have here the employees per hundred miles of line. We have taken the engineers, firemen, conductors and the other trainmen. We find here, for instance, and I would have you keep well in mind the fact that our train in 1890 is 207 and our train in 1899 in 292 tons or an increase of 41 per cent.—we have here, engineers in 1890 37; number in 1899, 37; It did not take any more engineers to move that trains 41 per cent. heavier. Firemen, 38; it is an increase of one fireman—from 38 to 39, but the 39 does not reach the maximum. That had been reached in 1892 when they employed 42 firemen. Conductors, 27 men; 27 now. The other train men a decrease from 80 in 1890 to 75 in 1899, and they have been up as high as 87. Next we come to the average daily compensation.

Mr. WARRINGTON: What territory does that cover?

Mr. MACDONALD: Groups 1, 2 and 3 consolidated; the same as the rest of our statistics. We find in 1892, the first year of these statistics, an engineer was getting $3.47 for running a train of 216 tons, He is getting today $3.57, 10 cents more a day, for running a train of 292 tons. Firemen, $1.97 in 1892 and $2.00 now, three cents more. In conductors $2.90 in 1892 and $2.98 now. The other trainmen $1.86 in 1892 and $1.91 now.

666 Mr. WARRINGTON: Now, can you tell us in this connection about the blue portion? Have you described that all you wish?

Mr. MACDONALD: I think I have described that fully. The percentage figures on the soap rates have already been before you. This (indicating) is the price of soap. These are the prices on tallow. (indicating.)

Mr. WARRINGTON: I believe you have stated that you know those figures to be correct?

Mr. MACDONALD: I know them to be correct.

Mr. COLSTON: That is from the Commission's report?

Mr. MATTHEWS: And the figures he has just now testified to.

Mr. WARRINGTON: The figures that are given here in blue.

Mr. COLSTON: Do you leave these with the stenographer?

Mr. WARRINGTON: Yes sir.

Mr. MACDONALD: I am able to give you a copy of that, if you desire it.

Mr. WARRINGTON: Are you able to tell about the cost per ton per mile of hauling soap?

Mr. MACDONALD: I have prepared a statement of that.

667 Mr. WARRINGTON: I wish you would give it to the court.

The paper was produced by witness.

Mr. WARRINGTON: What is the paper you have now?

Mr. MACDONALD: The paper is made with the purpose of showing what the soap rates pay per ton per mile.

Mr. WARRINGTON: Then it is not the cost per ton per mile?

Mr. MACDONALD: It shows the rates per ton per mile on soap.

Mr. WARRINGTON: That is my error, I beg pardon. Describe it to the court. We will offer*ed* it and have it numbered No. 7.

The same is hereto annexed and marked Exhibit No. 7, Macdonald.

Mr. MACDONALD: This statement is made up with the idea of showing that the rates per ton per mile received—and I will speak inclusively of the 6th class and 5th classes carload lots, it being evident that the less than carload rates pay higher figures per ton per mile—this is made up to show that the rate per ton per mile as figured between the extreme distances, Chicago and New York, that is a minimum; that is, the rate per ton per mile received on soap from Chicago to New York would be the minimum rate per ton

668 per mile received on soap anywhere, and for the shorter distances very much higher rates per ton per mile are received.

Mr. BAYLESS: Before you begin, may I ask if that statement is made up with the allowances to the Ivorydale and Mill Creek Valley Railroad Company?

Mr. MACDONALD: No, it is not made up in that way.

Mr. WARRINGTON: It is made up to include the service rendered by the Ivorydale and Mill Creek Valley Railroad Company?

Mr. MACDONALD: Yes. You understand the Ivorydale rates and Cincinnati rates are the same and what would apply to us would apply to any other soap maker. I have made this statement in this way to prove the point which I have made. That is, I have taken the three lines made by these three carriers from Cincinnati to New York, that is, first the Big Four, going over the Big Four to Cleveland, the Lake Shore to Buffalo and the New York Central to New York, we find the distance 886 miles; the lowest rate per ton per mile which they could be asked to accept there would be .49, equal to about one half a cent.

669 The CHAIRMAN: What do you mean by the "lowest rate they could be asked to accept."

Mr. MACDONALD: I mean that makes the minimum from Cincinnati to New York. It is the longest distance. That is the lowest rate.

The CHAIRMAN: The rate to New York from Cincinnati on soap divided by the mileage of the Big Four, the Lake Shore & Michigan and the New York Central——

Mr. MACDONALD: Makes that rate.

The CHAIRMAN: Of how much per ton per mile.

Mr. MACDONALD: 49, practically one-half a cent. That is based on the 6th class rate, the rates we claim; not the rates we receive. You understand this is the longest route to New York, there are

others a hundred miles shorter. To start with the Big Four, to show what they earn on local business—and you must bear in mind in this connection that we know in the soap business that the volume of business is to near-by points; the volume of business moves three hundred miles and less. For instance, our business in the State of Ohio would be much larger than in New York State or points taking the New York rate.

670 Mr. BAYLESS: Does that include the lighterage at New York?

Mr. MACDONALD: Yes, sir; the gross rate, the rate included in your tariff to New York.

Mr. BAYLESS: On 5th or 6th class?

Mr. MACDONALD: 6th class. I am taking the rate we are claiming. Cincinnati to Dayton, 56 miles, over the Big Four, rate 6½ cents and the Big Four would earn 2.32 cents. From Cincinnati to Cleveland, 263 miles, they earn four fifths of a cent or .80. Now on the Lake Shore we find on the local haul of theirs to Erie 95 miles they make 1.68. From Cleveland to Buffalo, 183 miles, they make .92. Going on to the New York Central from Buffalo to Rochester, 69 miles, they make 1.45; to Syracuse 1.07. From Buffalo to New York, 440 miles, they make .59. This same course has been pursued with the other lines. We have taken, for instance, the Union Line. We have not figured the C. H. & D. In that we figured direct from Cincinnati, taking the Pan Handle and the Pennsylvania.

The CHAIRMAN: Is that what you call the Union Line?

Mr. MACDONALD: Yes sir. We have given the same figures here. I would call attention to the fact that from Cincin-

671 nati to New York, the Pennsylvania being the short line, 750 miles, they make .57 per ton per mile on soap in 6th class. All my figures refer to soap in 6th class. We show Cincinnati to Columbus, Columbus to Pittsburgh, Pittsburgh to Altoona, Pittsburgh to Harrisburg, Pittsburgh to Philadelphia, and Philadelphia to New York. The rate from Philadelphia to New York is as much as 2.08 cents. We do exactly the same thing with the B. &. O. Southwestern to Parkersburg and the B. & O. from Parkersburg east. Then going into Central Freight Association territory, we select places which would make a scale 25 miles from Cincinnati, 50 miles from Cincinnati, 100 miles, 150 miles, 200 miles, going up and reaching a maximum distance of 500 miles at Petoskey, Mich. We find that to Hamilton, a short distance, the C. H. & D. make 3.21 cents, and it runs down from that to the lowest rate per ton per mile, 6th class, on soap to any point shown here, .79 of a cent. I simply wanted you to notice in connection with this how much in excess of rates per ton per mile soap would pay in 6th class, or above this average rate per ton per mile received by the Official Classification group for the last year,

672 the only exception being this first rate I figured here from Cincinnati to New York over the New York Central, which is a very long line, and to emphasize particularly that where the volume of our business goes, that is, from Cincinnati to Central

Freight Association territory, the lowest they are asked to receive is .79 of a cent, which is very much in excess of their average. It would perhaps be interesting to know how much in excess it is of their average. I might say that that shows exactly the same data as to third class, fourth class and 20 per cent. below third class.

Mr. MAXWELL: The columns are marked?

Mr. MACDONALD: Yes, sir; the columns are marked and the mileage given.

Mr. WARRINGTON: What, if any efforts have you made to obtain official reports of railroad companies or their presidents within the Official Classification for the last year or two?

Mr. MACDONALD: I have made considerable effort and have been successful in getting a number of the reports of presidents of different roads in this territory, their reports to their stockholders.

673 Mr. WARRINGTON: Have you those reports here?

Mr. MACDONALD: I have.

Mr. WARRINGTON: Where are they?

The reports were produced by the witness.

Mr. WARRINGTON: What companies do they embrace?

Mr. MACDONALD: I have here the Reading Company for 1899, The Fourth Annuel Report of the Erie Railroad for 1899, that is, for the year ending June 30; the Seventy-Third Annual Report of the Baltimore & Ohio for the year ending June 30, 1899; the Pennsylvania Railroad Company Annual Report for the calendar year 1898; also the Pennsylvania Railroad Company's Report for the fiscal year ending 1899. The 30th Annual Report of the Board of Directors of the New York Central and Hudson River Railroad for the year ending June 30th, 1899.

Mr. BAYLESS: Have you a report of the Procter & Gamble Company to their stockholders?

Mr. MACDONALD: No, sir; I have not any such report.

Mr. WARRINGTON: Do you want us to give you that now? What is the matter with your report.

Mr. MAXWELL: We will not interrupt the proceedings.

674 The CHAIRMAN: Let the witness identify the documents. What do you want to do with them.

Mr. WARRINGTON: I would like to have them identified for the moment. I do not offer them in evidence at this moment.

Mr. COLSTON: We would like to have a Procter & Gamble Report if you have one. Have you got one?

Mr. WARRINGTON: Not with me.

Mr. COLSTON: Will you get one?

Mr. WARRINGTON: Yes sir. Will you gentlemen give me your last President's reports—where are they?

Mr. MAXWELL: In Poor's Manual.

Mr. COLSTON: I will give you our present one. (Handing report to Mr. Warrington.)

Mr. WARRINGTON: What president is it?

Mr. COLSTON: Never mind, I will give it to you. You asked for it and tried to work a bluff. I call attention to what is stated

on page 6 of the last report of the Baltimore & Ohio Southwestern.

675 Mr. WARRINGTON: I thank you very much for this. We will have to have time to investigate it. We have investigated it some. Now, Mr. Macdonald, have you made investigations of these reports about which you testify and which you produce with reference to any of the figures given in the statistics of the Commission?

Mr. MACDONALD: These reports generally and as a whole confirm the main facts as shown by the statistics of the Commission; that is, the falling rate per ton per mile, the falling cost per ton per mile, and by the way, the presidents show in their reports to their stockholders an increase in the tons to a train, an increase in the size of cars and engines and also a gain made in the matter of reduction of grades and curves.

Mr. BAYLESS: Now, your honors, I do not think that evidence is competent. He speaks of what one report shows as compared with another report, both of which are official. They must speak for themselves. They are attempting to prove by this witness what the comparison shows. It seems to me the Commission can determine that equally as well or better than the witness. I do not think that class of evidence is competent in any court or tribunal.

676 Mr. WARRINGTON: Your honors see how quickly my charitable friend would get me into a dilemma if I offered the whole. If I offered from any particular one, then, of course, the others would not be bound by it. He gave that argument this morning. In that way you would not get them at all.

The CHAIRMAN: Let me ask the witness or counsel how much do these reports which are made by the presidents or directors to the stockholders differ from the reports made to the Commission?

Mr. MACDONALD: I suppose I am competent to testify as to what is reported to the Commission, as we report by the Ivorydale & Mill Creek Valley Railroad. Those reports are very complicated, I know, and I have very good reason to know what they are. These reports differ principally in showing the cost separately between freight and passengers. They show the cost per ton per mile, which is not shown in the Statistics given the Commission, or at least not published.

The CHAIRMAN: I asked in what respects, if any, these reports to the stockholders differed from the reports of the roads to the Commission. I had in mind obviating the controversy over these

677 reports to the stockholders and using the reports made by these roads to the Commission. Do not all the facts on which you would rely appearing in those reports to the stockholders appear also in the reports to the Commission which are now on file.

Mr. MACDONALD: I think all the facts would be obtainable from the figures given to the Commission. As far as the published reports to the Commission go, they do not longer give us a cost per ton per mile or separate the cost of running a freight train one mile from the cost of running a passenger train one mile, and that information is usually obtainable from the presidents' own reports. The other prominent difference is, the statements made, the general reading matter in the reports of the presidents to the stockholders as

to what they have been able to accomplish, their conclusions from the reports.

Mr. MATTHEWS: In the way of economies?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: Let me see if I understand you. Witness produces and identifies various reports from presidents and boards of directors to their stockholders, and I understood him to state
678 that an examination of those reports supported the figures given by him in one of the tables which he produced here of the diminishing rate per ton per mile and the increasing train load etc. That is what I understood him to say.

Mr. WARRINGTON: And the cost per ton per mile.

Mr. MAXWELL: He has given the cost per ton per mile. He has carefully omitted saying anything about that.

The CHAIRMAN: I have not understood the witness to go farther than to say in a general way that those reports sustain the figures he produced here in these statistics.

Mr. MACDONALD: They support in a general way all the facts on there (referring to exhibits). They show a reducing rate per ton per mile. They show the cost per ton per mile of the individual road. In the case of the Pennsylvania, we are able to show it for a number of years and show a reduction.

The CHAIRMAN: What they show best appears from the reports themselves.

Mr. WARRINGTON: Your honors, counsel says we are carefully avoiding that.

Mr. MAXWELL: I withdraw that statement, but as the
679 Chairman evidently thought one of these tables showed the cost per ton per mile—none of the tables, I understand, show that.

Mr. WARRINGTON: They do down to 1893.

The CHAIRMAN: There was a period of several years during which the statistical report undertook to make a separation between the freight and passenger movement, but we abandoned that effort, because we became satisfied that any attempt to do so would not likely result in giving the public the actual facts. Nobody knows exactly what the difference is and it varies so much with different roads and in different parts of the country as the relative amount of freight or passenger traffic is carried, that averages, an attempt to arrive at them, for the whole country seemed to us to be more likely to mislead than to instruct anybody. That, in a general way, is the reason the Commission discontinued making those distinctions.

Mr. GILL: And the Annual Reports made by the Presidents in that respect are erroneous.

The CHAIRMAN: I did not like to say that, but it must be only an approximation in any case.

680 Mr. GILL: That is all. It is generally admitted.

The CHAIRMAN: He has produced the reports. They are identified and are doubtless authentic. Do you desire to offer them in evidence?

Mr. WARRINGTON: We will offer them in evidence.

Mr. COLSTON: The only objection I have is to the bulkiness of the
ecord.

Mr. WARRINGTON: Now, I will tell you about that. I am perfectly
illing to agree, and I am glad you suggested it. I do not wish to
ffer things that are obviously irrelavant. There are matters in these
eports that we could not be concerned with, but I do wish to get them
n for the purpose of referring to things germane to what——

The CHAIRMAN: Will you have occasion to rely on any fact ap-
earing in those reports except as you may call attention to it in the
rgument of the case?

Mr. WARRINGTON: No, we will call your attention to it, if I under-
tand you.

Mr. MAXWELL: But we may want to offer evidence, your honor.
think we ought to know what it is.

Mr. WARRINGTON: Well, I cannot give you the pages now.

381 I will do that beforehand.

The CHAIRMAN: Cannot you inform counsel on the other
ide by tomorrow morning what facts there are in these reports that
you rely upon as the basis of any finding by the Commission?

Mr. WARRINGTON: Yes sir.

The CHAIRMAN: So that counsel on the other side may not be mis-
led by the wholesale introduction of these documents.

Mr. WARRINGTON: We shall do that.

The CHAIRMAN: Then, it will be understood that the Commission
will only use these reports to the extent indicated by what you call to
the attention of counsel on the other side?

Mr. WARRINGTON: That is right. That is all we ask.

The CHAIRMAN: And that itself can appear in the record so that
the Commission may know to just what extent those reports are to be
considered.

Mr. WARRINGTON: We will make a statement in your honor's
presence so that it may be taken down tomorrow morning.

The CHAIRMAN: Very well, that disposes of that matter.

682 What next, Mr. Warrington?

Mr. WARRINGTON: Mr. Macdonald, something has been
said about increased and increasing prices during the past year.
What have you to say? Are prices still increasing or otherwise of
railroad materials, to state it shortly, and railroad equipment?

Mr. COLSTON: Increasing now, today?

Mr. WARRINGTON: Yes sir.

Mr. COLSTON: We object to that.

The CHAIRMAN: Is not that rather anticipating a phase of the
case?

Mr. WARRINGTON: I think you are right. I withdraw the ques-
tion. Gentlemen, you may cross examine.

Cross examination:

Mr. MAXWELL: How far are the buildings of the Procter & Gam-
ble Company from the C. H. & D. Ry?

Mr. MACDONALD: They vary from a distance, I suppose, of a
square to half or three quarters of a mile.

Mr. MAXWELL: How far is the warehouse that you have
683 referred to from which you load your freight?

Mr. MACDONALD: By rail, the track which we use, it is, I suppose, four squares. It is about one-half a mile by rail to the Big Four and something more than that, perhaps five-eighths of a mile to the B. & O. Southwestern. Our rails are like some other railroads. There are a good many curves and turns. They do not go on a bee line.

Mr. MAXWELL: What is the direct distance of your warehouse from the tracks of the C. H. & D.?

Mr. MACDONALD: I should say from a square to a square and a half. That is, you understand the nearest point. The warehouse is 600 feet long. The extreme point is two and a half squares.

Mr. MAXWELL: Well, there are squares and squares. What distance is it?

Mr. MACDONALD: I should say the end of the warehouse nearest the C. H. & D. was about 500 or 600 feet from the C. H. & D. tracks. And then the warehouse is 600 feet long; and it is very much farther than that from the Big Four and the B. & O. Southwestern.

684 Mr. MAXWELL: The Ivorydale Plant is to the east of the C. H. & D. tracks?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: The C. H. & D. runs north and south of that point?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: And the tracks of the Big Four and B. & O. Southwestern are to the east of Ivorydale?

Mr. MACDONALD: They are to the east of Ivorydale.

Mr. MAXWELL: The tracks of the Pan Handle Company are nowhere near?

Mr. MACDONALD: We connect with them at Dayton over the C. H. & D.

Mr. MAXWELL: What is the distance from Ivorydale to Dayton?

Mr. MACDONALD: 47 miles over the Big Four and 53 miles over the C. H. & D., I think. I may miss it by a mile or two.

Mr. MAXWELL: The C. H. & D. has side-tracks at Ivorydale?

Mr. MACDONALD: They have their yards there. I think their Cincinnati yards are there.

Mr. MAXWELL: They also have side-tracks?

Mr. MACDONALD: They have side-tracks.

685 Mr. MAXWELL: And these switch tracks of yours that run into the Ivorydale factory connect with the C. H. & D. side tracks?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: And the C. H. & D. sets cars to be delivered to you upon this side-track and your engine takes them from that side track?

Mr. MACDONALD: Upon their side-track. We go on to their track and get them.

Mr. MAXWELL: You- engines go out on the C. H. & D. side-track

where the C. H. & D. set the cars and bring them to such portions of your factory as you desire?

Mr. MACDONALD: Yes sir. Perhaps I can make that plainer by saying that all through trains are broken up there. A train from Toledo, a through train, stops there and a car is put on the track there and we go and get it.

Mr. MAXWELL: And is the same practice followed by the Big Four and the B. & O. Southwestern?

Mr. MACDONALD: You mean in regard to——

Mr. MAXWELL: In regard to their setting the car for you on their side-track where your engine comes and takes it.

686 Mr. MACDONALD: There is a difference in the fact that the tracks are ours and they put the freight on our tracks in the case of the B. & O. Southwestern. In the case of the Big Four, the tracks belong to the Big Four and in the case of the C. H. & D. the tracks belong to the C. H. & D.

Mr. MAXWELL: And in the case of outgoing freight, you deliver the car on the side track of the C. H. & D.

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: You take it up there?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: What you do in the case of soap that you deliver to the C. H. & D. for transportation is to take it on your switch track from your ware-house, which you have already described, over to the C. H & D. side-track?

Mr. MACDONALD: And in addition we load it, which is a considerable factor.

Mr. MAXWELL: You load it?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: Do you load your soap all at this ware-house?

Mr. MACDONALD: Yes sir.

687 Mr. MAXWELL: Where do you take incoming freight?

Mr. MACDONALD: Wherever it may be needed—whatever part of our plant it may be needed.

Mr. MAXWELL: You have not a picture of your plant here?

Mr. MACDONALD: No, I have not. We can furnish a bird's-eye view if you desire it.

Mr. COLSTON: You could make a little diagram and submit it?

Mr. MACDONALD: It would be faulty, but I can do so, if you desire me to do so.

Mr. COLSTON: I would like you to make a little draft showing where that warehouse is, where the rest of the plant is and the distance by rail from this warehouse, which is, I understand, the point from which these shipments are made to the tracks of these several railroads. You can do that, can you not?

Mr. MACDONALD: Yes sir.

Mr. COLSTON: You need not do it now. You can do it tonight.

Mr. MAXWELL: These different buildings that constitute your plant face generally east and west do they not?

688 Mr. MACDONALD: Not as a rule at all. There is no rule about that. The warehouse runs one way and the framing house the other way.

Mr. MAXWELL: How many buildings are there?

Mr. MACDONALD: Well, I am not advised. I think there are between 30 and 40.

Mr. MAXWELL: And your switch track runs into such of those buildings as you have occasion to take freight to and take freight from?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: And it is this net-work of switch-tracks running to and between the various buildings which together make as you say 7 miles?

Mr. MACDONALD: Yes sir.

Mr. *Macdonald:* You are the president of this railway company, I believe?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: How long have you been president?

Mr. MACDONALD: I cannot recollect exactly. It must be four or five years.

Mr. MAXWELL: Who was your predecessor as president?

689 Mr. MACDONALD: Mr. William A. Proctor.

Mr. MAXWELL: He is president of the Procter & Gamble Company, I believe?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: Do you own any stock in this railway company?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How much?

Mr. MACDONALD: It is either 160 or 166 shares.

Mr. MAXWELL: Do you own that?

Mr. MACDONALD: No, the Procter & Gamble Company own it as a matter of fact.

Mr. MAXWELL: You do not own any stock, do you?

Mr. MACDONALD: Not really, no, sir

Mr. MAXWELL: 160 shares stand in your name?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How long has that stock stood in your name.

Mr. MACDONALD: I could not tell you; it is several years.

Mr. MAXWELL: Where are the certificates?

Mr. MACDONALD: In Cincinnati.

Mr. MAXWELL: In whose possession?

Mr. MACDONALD: In the possession of the Procter & Gam-

690 ble Company.

Mr. MAXWELL: Did you ever get any dividends on those shares of stock?

Mr. MACDONALD: No, sir; there never was any distribution of dividends.

Mr. MAXWELL: There never was? The Procter & Gamble Company never got any, did they?

Mr. MACDONALD: The first few years the railway company was

organized there were dividends paid and the Procter & Gamble Company received them then.

Mr. MAXWELL: Up to what time did the Procter & Gamble Company receive dividends?

Mr. MACDONALD: I do not recollect that—my recollection is, two or three years after the organization.

Mr. MAXWELL: How much dividends did they receive?

Mr. MACDONALD: Four per cent.

Mr. MAXWELL: On what?

Mr. MACDONALD: The capital stock.

Mr. MAXWELL: What was the capital stock?

Mr. MACDONALD: $100,000.

Mr. MAXWELL: They got that per annum?

Mr. MACDONALD: Per annum, yes, sir.

Mr. MAXWELL: How did you arrive at that dividend?

691 Mr. MACDONALD: We disposed of the surplus we had on hand at the end of the year.

Mr. MAXWELL: How do you dispose of it now?

Mr. MACDONALD: We have not found any to dispose of for the last few years.

Mr. MAXWELL: What do you do with this five or six dollars a car that you get from the railroads?

Mr. MACDONALD: We pay our men—we have men for loading freight, have two engineers, two firemen, we have to have switchmen, we have to renew our tracks, buy coal for locomotives and many things which go to make up the railroad business.

Mr. MAXWELL: Do you say you pay it all for that purpose?

Mr. MACDONALD: No, sir; we make a profit and would not do it if we did not.

Mr. MAXWELL: That is what I asked you about—your surplus. You understood that, did you not? Will you answer me what you do with that now?

Mr. MACDONALD: We make a cost in the simple process of operation; we lease the tracks from Procter & Gamble and pay a rental.

Mr. MAXWELL: Will you not answer the question what you do with that profit. Before you distributed dividends to the

692 Procter & Gamble Company.

Mr. MACDONALD: We pay Procter & Gamble a rental, which is a fixed rental on our road.

Mr. MAXWELL: How much did you pay them last year—how much?

Mr. MACDONALD: That has varied. We paid them $30,000, I think.

Mr. MAXWELL: You paid Procter & Gamble last year $30,000?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How much did you have left in your treasury?

Mr. MACDONALD: I could not tell you that. I will say, Mr. Maxwell, that we make a sworn statement of this and it is on file here with the Commission. If I could have one of our reports I could read it off. I do not remember the figures on this business.

Mr. MAXWELL: How did you come to pay the Procter & Gamble Company last year $30,000?

Mr. MACDONALD: Why, the thing is regulated entirely by the facilities we have. If we started out with three miles of track and paid $10,000 for three miles, for seven miles we think that much track is worth more. As business expands we pay
693 higher rental.

Mr. COLSTON: Is it a written lease with the railroad company?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: Have you it about you?

Mr. MACDONALD: No, sir.

Mr. COLSTON: Have you it in Washington?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: How did you come to pay $30,000 last year, by what provision of the contract?

Mr. MACDONALD: Procter & Gamble owned the tracks and ground and right to do business there, and as operating a railroad we paid them for that right.

Mr. MAXWELL: How did you come to pay $30,000? Why did you not pay $20,000 or $25,000 or $40,000?

Mr. MACDONALD: Mr. Chairman, we made a sworn statement of this road to the Commission and we are anxious to give you all the information we can. If Mr. Maxwell will make the question clear I will be glad to answer it.

The CHAIRMAN: Mr. Maxwell asks, as I understand, how you arrived at the rental that the railroad company pays Procter & Gamble.

Mr. MACDONALD: It is the same as any contract would be,
694 made between two parties. As President and General Manager of the Ivorydale & Mill Creek Valley Railroad Company, I get together with Mr. Procter at the beginning of the year. We talk over the facilities and fix the rent.

Mr. MAXWELL: You fix the rent at the beginning of the year?

Mr. MACDONALD: Possibly not at the beginning of each year. It depends on whether there has been any change in the facilities or not.

Mr. MAXWELL: Can you tell me how you came to pay $30,000 last year. Was that because you made a contract at the beginning of the year to pay $30,000, or was it because it was all you had?

Mr. MACDONALD: It was because as General Manager of the Ivorydale & Mill Creek Valley Railroad I thought that was what the facilities were worth.

Mr. MAXWELL: What did you pay the year before?

Mr. MACDONALD: I could not recall, I do not think. I am under the impression it was less than that.

Mr. MAXWELL: How much less?

Mr. MACDONALD: I could not tell you. It would show on the record in the statistical report of the Commission.

Mr. MAXWELL: Well, perhaps I can refresh your recollec-
695 tion by calling your attention to a statement that appears in Poor's Manual for 1899, for the year ending June 30,

1898. It states that freight earnings were $43,601. Was that what you got from the railroads?

Mr. MACDONALD: Those were our freight earnings, yes, sir.

Mr. MAXWELL: That was what you got from the railroads?

Mr. MACDONALD: Yes, sir. You understand, I will supplement that by saying that there is certain service as between us and the Procter & Gamble Company which is paid for which might affect those figures one way or the other; they might pay us something for some service that would affect that.

Mr. MAXWELL: That says "freight earnings."

Mr. COLSTON: (Referring to Poor's Manual.) Other earnings $7,872, making a total of $51,473. What Mr. Maxwell wants to know is whether that $43,601 is money received from the railroads under this contract on the outbound stuff and this $2.50 a carload?

Mr. MACDONALD: The greater portion of it.

Mr. COLSTON: How much is not?

Mr. MACDONALD: I could not tell without the figures.

Mr. COLSTON: Practically all of it comes from that source, does it not?

696 Mr. MACDONALD: Yes, sir; practically all.

Mr. MAXWELL: This statement says the operating expenses were $25,719. What did that cover?

Mr. MACDONALD: It covered the expense of operating at Ivorydale, paying for the service, paying men for loading, actual cost of operation—very much the same as any railroad would have.

Mr. MAXWELL: Does that include anything for the use of tracks?

Mr. MACDONALD: No, the rental is outside of that.

Mr. MAXWELL: And it states that the net earnings were $25,754.

Mr. MACDONALD: Yes, sir; I presume those are correct. We report to Poor's Manual.

Mr. MAXWELL: It states that you paid rental $25,000. Was that what you paid Procter & Gamble?

Mr. MACDONALD: I presume it is correct. I would have to verify it by my books. I recall a year it was $25,000. I presume that was the year.

Mr. MAXWELL: Well, it seems to have turned out that you paid the Procter & Gamble Company all but $754 of your net earnings for that year. Was there any agreement in ad-

697 vance by which you did that?

Mr. MACDONALD: No.

Mr. MAXWELL: There was none in advance?

Mr. MACDONALD: No.

Mr. MAXWELL: You simply at the end of the year——

Mr. MACDONALD: I beg your pardon—I will ask you to repeat that question.

The question was repeated by the Stenographer.

Mr. MACDONALD: I must ask leave to change my answer. We fix the rent prior to each year or each series of years, as there may be changes in the facilities.

Mr. MAXWELL: Then, it was a pure coincidence that you paid

Procter & Gamble that year all but $754 of the net earnings of the railroad?

Mr. MACDONALD: I am under the impression—I could tell better if I had the figures—that we carried over several thousand dollars surplus from the year before, so the result is not exactly as you have it.

Mr. MAXWELL: I am not asking anything about surplus. That is shown. I am asking how you came to pay that $25,000, which was just short $754 of your net earnings for the year?

Mr. MACDONALD: Because I thought it was what the fa-
698 cilities were worth.

Mr. MAXWELL: Does it not happen that you think they are worth enough to take just whatever the net earnings of this company are?

Mr. MACDONALD: As a matter of fact I have stated that the Procter & Gamble Company own the Ivorydale & Mill Creek Valley Railroad Company. So if you want me to draw that conclusion for you I will say that it does not make much difference whether they receive the money as rent or dividends.

Mr. MAXWELL: It is not the conclusion. Will you state the fact?

Mr. MACDONALD: The rental is not fixed on that basis. It may be the ultimate fact.

Mr. MAXWELL: Then, in addition to that, you had some surplus on hand that year, I believe. The statement in Poor's Manual shows that you carried a surplus of $505 to a surplus of $5,511 already existing, showing a total of $6,016.

Mr. MACDONALD: I cannot say whether those figures are correct without having an opportunity to compare them with my record. I would be very glad if the figures would come from the Commission's statistical report, which I have sworn to and know to be correct.

Mr. MAXWELL: Did you ever have a meeting of the Board
699 of Directors of this company?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: When?

Mr. MACDONALD: I believe our by-laws provide that we shall meet the first Tuesday in June.

Mr. MAXWELL: Did you have a meeting the first Tuesday in June?

Mr. MACDONALD: It was interfered with this year. It was postponed.

Mr. MAXWELL: Did you have a meeting for a year back?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: When?

Mr. MACDONALD: The first Tuesday in June, as far as my recollection goes. We may not have had a quorum and adjourned.

Mr. MAXWELL: You have not a meeting every year?

Mr. MACDONALD: We meet whenever there is business to transact.

Mr. MAXWELL: Will you tell us who the other members of that Board of Directors are?

Mr. MACDONALD: William A. Procter, William Cooper Procter, J. H. French, and Harry W. Brown.

700 Mr. MAXWELL: William A. Procter is the President of the Procter & Gamble Company?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Does he own any stock in this railroad company?

Mr. MACDONALD: Yes, sir; and J. H. French is the Treasurer of the Procter & Gamble Company and owns a portion of the stock and Harry W. Brown is the Advertising Manager and owns a portion of the stock and William Cooper Procter is General Manager and owns a portion of the stock.

Mr. MAXWELL: Do they own any that does not belong to the Procter & Gamble Company?

Mr. MACDONALD: No; it all belongs to the Procter & Gamble Company.

Mr. MAXWELL: You mean the stock is in the name of these persons, all of whom are officers of the Procter & Gamble Company, do you not?

Mr. MACDONALD: I told you that.

Mr. MAXWELL: This is the Procter & Gamble Company practically?

Mr. MACDONALD: Yes, sir; it is a wheel within a wheel, Mr. Maxwell.

701 The CHAIRMAN: That seems to be covered by his statement that Procter & Gamble own all the stock.

Mr. MAXWELL: We called the President of this company and took his deposition, and after Your Honors see that deposition you will appreciate the necessity of our making it clear by this testimony, because the President was entirely unable to advise us who owned this stock or whether he owned it.

Mr. MACDONALD: He is President of the Procter & Gamble Company.

Mr. MAXWELL: Yes.

Mr. WARRINGTON: What has this to do with it.

Mr. COLSTON: We have a right to get credit for this two cents and 1½ cents. That is what we want.

The CHAIRMEN: If I understand witness' statement, he says that Procter & Gamble own all the stock of this railroad company, some of which stands in the name of himself and other people to enable them to act as Directors under the statute.

Mr. WARRINGTON: That is correct, Mr. Chairman.

The CHAIRMAN: That being so, it does not make any difference whether this money comes to them as dividends or not.

702 Mr. MAXWELL: I believe the result of my examination has been to establish that fact I examined the President of the company for an hour at Cincinnati without being able to ascertain that fact.

Mr. MACDONALD: The president of Procter and Gamble Company.

Mr. MAXWELL: Is that your signature? (handing paper to witness.)

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Are the other signatures those of the persons they purport to be?

Mr. MACDONALD: Yes sir; I find here the signatures of William M. Green, General Manager of the C. H. & D.; William Duncan, Second Vice President of the B. & O. Southwestern; Samuel P. Shane, General Freight Agent of the Erie; Oscar G. Murray, Vice President of the C. C. C. & St. L. Ry. Co., with whom I recall making the agreement.

Mr. MAXWELL: We offer this contract in evidence.

(The same is hereto annexed and marked Exhibit No. 8, Maxwell.)

703 Mr. COLSTON: I would like to substitute for the original contract, a copy. Shall I read it now?

The CHAIRMAN: If you desire. That is the contract, the signatures to which were identified by the witness?

Mr. COLSTON: Yes sir. There is a matter we wish to call attention to.

The CHAIRMAN: What is the date of the contract, Mr. Colston?

Mr. COLSTON: It was made in December, 1895.

The CHAIRMAN: Is that contract still in force, Mr. Macdonald?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: And has been since the time of execution?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: Without change?

Mr. MACDONALD: Without change.

Mr. Colston read the contract as follows:

704 "Memorandum of agreement made and entered into this 28th day of December, 1895, by and between the Ivorydale & Millcreek Valley Railway Company, party of the first part, and the Cincinnati, Hamilton & Dayton R. R., the Baltimore & Ohio Southwestern Ry., the Erie R. R., and the Cleveland, Cincinnati, Chicago & St. Louis Ry., parties of the second part, as follows, to wit:

"1. On all business outbound destined to the Western Termini of the Trunk Lines of points east thereof, the Railway Companies, parties of the second part, agree to allow the party of the first part 1½ cents per 100 pounds to cover the terminal expenses of the party of the first part; same to be deducted on the fact of the way-bill.

"2. On all out-bound business destined to territory west of the Western Termini of the Trunk Lines, the parties of the second part agree to allow the party of the first part 2 cents per 100 pounds to cover the terminal expenses of the party of the first part; same to be deducted on the face of the way-bill.

"3. On all in-bound general car-load traffic yielding a revenue to any of the parties of the second part outside of the switching charge, the parties of the second part agree to allow the pary of the

705 first part $2.50 per car, minimum weight 20,000 pounds to cover their terminal expenses; no allowance to be made for cars containing less than 20,000 pounds; Same to be settled monthly by the Ivorydale Agents of the parties of the second part.

"4. On coal traffic yielding a revenue to any of the parties of the second part outside of the switching charge, the parties of the second part agree to allow the party of the first part $1.00 per car, to cover their terminal expenses; Same to be settled monthly by the Ivorydale agents of the parties of the second part.

"5. Regular switching charge on all traffic (including coal) between Ivorydale and Cincinnati, to and from connections, in both directions, to be $3.00 per car of 40,000 pounds or less and 1 cent per 100 lbs. for any excess over that weight; and on traffic between Cincinnati depots and Ivorydale $4.00 per car of 40,000 pounds or less, and 1 cent per 100 pounds for any excess over that weight.

"Rate on coal from Cincinnati proper (B. & O. S. W. Ry.—Ohio Division, C. C. C. & St. L. Ry. and C. H. & D. R. R. tracks) to Ivorydale is to be 20 cents per ton, minimum carload twenty tons, unless a small car should be furnished by the raiload, when 20 cents
706 per ton for the full capacity of the car will be charged. When coal is loaded at the elevators on the B. & O. S. W.—Mississippi Division tracks, the switching charge for that service is to be additional.

"Out of the above named switching charges on all traffic (including coal) between Cincinnati, Brighton, Stock Yards, Cumminsville or Winton Place, and Ivorydale, and also out of the switching charge between connecting lines at Cincinnati and Ivorydale, the parties of the second part agree to allow the party of the first part 50 cts. per car; Same to be settled monthly by the Ivorydale agents of the parties of the second part.

"6. It is further agreed by the party of the first part that it will during the continuance of this agreement give all its business outbound to all territory north of the Ohio River and west of the Mississippi River, and along the line of the Baltimore & Ohio Railroad with the exception of the State of Arkansas, to the roads parties of the second part, that they can handle via their own rails and connections, paying therefor full established rates as published from time to time.

"7. If at any time any one of the parties to this agreement thinks itself aggrieved by its provisions, it may call a meeting of
707 the parties hereto, which meeting shall be held within ten days from the issuance of a notice to that effect.

"8. This agreement to terminate on ten days' notice from either one of the parties signing this agreement.

"9. The above sections of this agreement shall become effective of date January 1st, 1896, when signed by the proper officer of each of the parties hereto, and remaining in effect until terminated in the manner provided in Section 8.

IVORYDALE & MILLCREEK VALLEY RY.
(Signed) J. M. MACDONALD, *G. M.*
CINCINNATI, HAMILTON & DAYTON R. R.
(Signed) W. M. GREENE, *G. M.*
BALTIMORE & OHIO SOUTHWESTERN RY.
(Signed) WM. DUNCAN, *2nd V. P.*
ERIE R. R.
(Signed) SAM P. SHANE, *G. F. A.*
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RY.
(Signed) OSCAR G. MURRAY, *2nd V. P.*"

708 Mr. COLSTON: There is no objection to substituting that copy?

The CHAIRMAN: No objection.

Mr. MAXWELL: There are some things further with reference to the operations of the Ivorydale & Mill Creek Valley Ry. Co. that I want to inquire into, but I do not want to ask you now. If you can save time by consulting the reports as to operating expenses with the reports you have on file with the Commission and show what those operating expenses were——

Mr. MACDONALD: I think if you ask the detailed question, though I cannot give the figures, I can give all the figures you want.

Mr. MAXWELL: Well, I will ask you now. I desire to do it in a way that will consume the least time. You employ how many engineers on that railroad?

Mr. MACDONALD: Two.

Mr. MAXWELL: And two firemen?

Mr. MACDONALD: Two firemen. I might say in connection with that, that we practically now use two engines all the time. There were times we only used one. Practically we have two engineers and two firemen all the time.

709 Mr. MAXWELL: This time in 1898, which is the year, the report for which I have before me, did they have two engineers then?

Mr. MACDONALD: I think so, to the best of my recollection.

Mr. MAXWELL: And two firemen?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And any train hands? If so, how many?

Mr. MACDONALD: It is all switching business, you understand. I think we keep two on the crews all the time; one, you might call a conductor and the other a switchman.

Mr. MAXWELL: That would be six men that you employ in connection with this railway?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: I thought he said two men with each train?

Mr. MACDONALD: Yes, sir; two men with each train—four men on each train.

Mr. MAXWELL: That is eight men.

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Are those all the wages and labor you include in these operating expenses?

Mr. MACDONALD: No, my own salary goes in there and the
710 salaries of the men that load the freight. You understand the service we perform there at our railway is exactly similar to what is performed at a freight depot, our warehouse corresponding to a freight depot. We take the freight and put it into the car, and perform exactly the same service the railroads perform in loading the freight. We have freight handlers.

Mr. MAXWELL: Are they employed altogether in handling this freight?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: By whom are they paid—Procter & Gamble?

Mr. MACDONALD: Yes, sir; by Procter & Gamble, as a matter of convenience and charged to us at the end of the month.

Mr. MAXWELL: And a portion of your salary is charged in that way?

Mr. MACDONALD: A portion of my salary, yes, sir.

Mr. MAXWELL: Is there any fixed sum credited to the Procter & Gamble Company on account of these wages they pay out?

Mr. MACDONALD: They charge us the actual wages. Those men are reported to the company and are practically employés
711 of the railroad company. As a matter of convenience the Procter & Gamble Company pay them on pay-days.

Mr. MAXWELL: How many freight handlers do you have. I want to understand how it comes that the operating expenses you charge up to that railroad amount to $25,000.00.

Mr. WARRINGTON: Do your honors regard this as material? If you do, I do not propose to make any objection?

The CHAIRMAN: Let me suggest that tomorrow morning we will have here the last report of this company up to June 30, 1899, and doubtless we can get at that from that report.

Mr. MAXWELL: Well, we will leave that and see whether the exhibition of that report will save time. I suppose that report will not show, and therefore I want to ask you now, whether anything was paid for this capital stock of $100,000 and if so how much and by whom?

Mr. WARRINGTON: Could that make any difference here, your honors?

The CHAIRMAN: That we will not decide now.

Mr. MACDONALD: Well, I am sorry not to give you any information, because I would be very glad to do so. I did not organize the Company.

The CHAIRMAN: Do you know whether that stock was
712 paid in or any part of it, in money or not?

Mr. MACDONALD: I think not. I think it was the good will and ability to do business there.

Mr. MAXWELL: Now this company owns, I believe you said, 75 cars?

Mr. MACDONALD: 75 cars.

Mr. MAXWELL: The railway company?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Did it pay for them?

Mr. MACDONALD: We have recently made a change in that respect. Our equipment and everything used to belong to the Procter & Gamble Company and it was all covered by our lease-hold. Recently we had a good reason for changing the ownership to the Ivorydale & Mill Creek Valley Railroad Company, so these cars stand today as the property of the Ivorydale & Mill Creek Valley Railroad Company.

Mr. MAXWELL: Now, will you kindly answer my question?

Mr. MACDONALD: What was the question.

Mr. MAXWELL: I will ask the stenographer to repeat it.

The stenographer repeated the question as follows:

"Did it pay for them?"

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: In money?

713 Mr. MACDONALD: It gave its note.

Mr. MAXWELL: To whom?

Mr. MACDONALD: The Procter & Gamble Company.

Mr. MAXWELL: When?

Mr. MACDONALD: I do not recall.

Mr. MAXWELL: Has it paid the note?

Mr. MACDONALD: Not yet. We are like a railroad company and take a note for one year, or two or three years, and hope to get through with them some time.

The CHAIRMAN: Pardon me, Mr. Macdonald, but I would not volunteer so much explanation.

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: It will be tedious enough anyhow. Just answer my questions.

Mr. MACDONALD: It is my anxiety to give it all to you?

Mr. MAXWELL: I appreciate your intense anxiety. I want to get all I can by asking as few questions as I can. I will be as brief as possible. You also lease cars, I believe?

Mr. MACDONALD: Who are you referring to now—the Procter & Gamble Company?

Mr. MAXWELL: The Ivorydale & Mill Creek Valley Railroad Company.

714 Mr. MACDONALD: We occasionally lease tank cars and that sort of thing. We have no lease now.

Mr. MAXWELL: Does the Procter & Gamble Company lease cars?

Mr. MACDONALD: Well, no.

Mr. MAXWELL: What is this Commerce Despatch Line?

Mr. MACDONALD: The Commerce Despatch Line is a concern that handle a lot of cars for which they wanted to obtain loading.

Mr. MAXWELL: Who was the concern?

Mr. MACDONALD: I think they are Philadelphia capitalists. I could not tell you exactly. A man by the name of Haynes is the General Manager.

Mr. MAXWELL: What relation has the Procter & Gamble Company to it or the Ivorydale & Mill Creek Valley Railroad Company?

Mr. MACDONALD: No relation, except that an advertisement of Ivory soap appears on the cars and we agree when those cars are placed in our yards that we will give them the preference in loading. I said there was not a lease, but it is understood we shall have the privilege of that advertising and they the privilege of leasing

715 for a period of years—five years.

Mr. MAXWELL: Have you some special arrangement about the compensation to be paid for that?

Mr. MACDONALD: We thought when we took the cars we would make some money. We divided the earnings over a certain amount per month, but the earnings never reached any such figure and we never received any mileage on them.

Mr. MAXWELL: Do you collect the mileage from the railroad company?

Mr. MACDONALD: No, they do.
Mr. MAXWELL: Do you collect the mileage on the cars you own?
Mr. MACDONALD: Yes sir.
Mr. MAXWELL: Where does that appear—in the earnings of the Ivorydale & Mill Creek Valley Railroad Company or the Procter & Gamble Company?
Mr. MACDONALD: I think that other item you read from Poor's Manual represents the mileage.
Mr. MAXWELL: On how many cars is that mileage—on 78?
Mr. MACDONALD: We own 75, but as a matter of fact only 60 of our cars, tank cars, move on foreign lines. Those would be the only ones out earning mileage.
716 Mr. MAXWELL: Are there any cars in which soap is shipped earning mileage?
Mr. MACDONALD: No.
Mr. MAXWELL: That is an earning on cars used in an entirely different business?
Mr. MACDONALD: Used for raw material.
Mr. MAXWELL: Have you prepared a statement of the amount of your tonnage which is composed of Ivory soap?
Mr. MACDONALD: No sir.
Mr. MAXWELL: And I suppose it is impossible for you to tell us now?
Mr. MACDONALD: Not any further than what our president Mr. Procter, said—about 20 to 25 per cent. of our soap business.
Mr. MAXWELL: Have you made an independent investigation which would enable you to tell us?
Mr. MACDONALD: No sir.
Mr. MAXWELL: You cannot tell us?
Mr. MACDONALD: No sir; no further than that.
Mr. MAXWELL: Your books would show?
Mr. MACDONALD: Yes sir; a tabulation from them would.
Mr. MAXWELL: You can tell this Commission if you wish
717 precisely what your shipments of soap are, could you not?
Mr. MACDONALD: I could if I had an opportunity to figure it out from our books, yes sir.
Mr. MAXWELL: You were present when I tried to get that information from Mr. Procter in his deposition at Cincinnati, were you not?
Mr. MACDONALD: Yes sir.
Mr. MAXWELL: And you are not prepared to furnish it now?
Mr. MACDONALD: No sir.
Mr. MAXWELL: You know I did try to get that information?
Mr. MACDONALD: Yes sir; I know you asked the question?
Mr. MAXWELL: And you have not made any investigation and cannot answer the question?
Mr. MACDONALD: No sir. You understand I am answering the question as far as he did. I know in a general way.
Mr. COLSTON: We are talking about the exact facts from the books. You have not compiled a statement from your books and you could do it, showing the exact amount of Ivory soap in pounds you ship?

Mr. MACDONALD: That would be possible.

Mr. MAXWELL: Have you made an investigation or are you able to prepare a statement as to the profits on Ivory soap?

718 Mr. MACDONALD: I could not do that. That is out of my line of business. I know nothing of that part of the business.

Mr. MAXWELL: You were present at the taking of depositions when I endeavored to ascertain that fact from Mr. William A. Procter, President of the Procter & Gamble Company?

Mr. MACDONALD: I have so stated.

Mr. MAXWELL: Is that any more out of your line of business than ascertaining the cost per ton per mile?

Mr. MACDONALD: Very much more out of my line of business.

Mr. MAXWELL: Who in your company could furnish that information?

Mr. MACDONALD: Our general manager, I presume, as nearly as it is possible to furnish it.

Mr. MAXWELL: Who do you mean by your general manager.

Mr. MACDONALD: Mr. William Cooper Procter.

Mr. MAXWELL: Who is the gentleman that could furnish it—is he?

Mr. MACDONALD: I presume so.

Mr. MAXWELL: How is that soap advertised? You said that it was sought by many people for toilet and bath purposes. How do these many people happen to seek this laundry soap for toilet

719 and bath purposes?

Mr. MACDONALD: We advertise it for the toilet, laundry and bath.

Mr. MAXWELL: Have you prepared among your other exhibits an exhibit of the advertisements you publish to show the Commission the qualities you claim for that soap and the class you put it in?

Mr. MACDONALD: I have not done so, but I would be extremely glad to do so, if you want us to.

Mr. MAXWELL: Well, anticipating that perhaps you had not done so, I picked up some magazines that came in our way at the news stand the last day or two with some illustrations, which perhaps you can identify. I call your attention to one which is taken from the Century, for February, 1900, which seems by the illustration to disclose the advantages of Ivory soap for the bathing of infants (producing advertisements). Do you recognize that?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: We offer that in evidence.

The CHAIRMAN: Mr. Maxwell, for what purpose do you offer testimony of that kind?

720 Mr. MAXWELL: We offer this testimony, if your honors please, for the purpose of showing the quality, character and grade of the soap which is carried under this classification at the rates which are described. We have been told that this company ships soap which it sells for $1.05 a box, advertised as common laundry soap, under this classification; and as your honors are advised, the classification covers all soap generally, and therefore, to get a correct understanding of the operation and effect of this classification as ap-

plied to this complainant, we would like to show the grade and character of the soaps as a whole which go in at this rate; and your honors, I believe, in the case of the Andrews Soap Company against the railroads had occasion to state the effect which was to be given to the manufacturers' proclamations of the character of the soap. It is for the purpose of getting the grading and status of this soap from the best source possible, to-wit, from the proclamations of the plaintiffs, that we want to call your honors attention to some of these advertisements.

The CHAIRMAN: I simply wondered whether the facts already appearing, that this was a high grade soap, suitable for toilet
721 as well as laundry use, would not sufficiently indicate that without going into the advertisements, which only represent their claims of the superiority.

Mr. MAXWELL: We believe if the statement had been made of the fact as we understand it, it would be unnecessary to disclose it, but I took down the very words the witness used in describing this grade of Ivory soap. His statement was that it was sought by many people for toilet and bath purposes, carrying the inference that it was common laundry soap, but that there were some people that sought it for toilet and bath purposes.

Mr. COLSTON: May I call your honors attention to what you said in that Andrews case, 4 Interstate Commission Reports, page 45. It is very true that there the Andrews Soap Company was dealing in soap they called the American Castile soap. They advertised it as a toilet soap and the railroads put that soap into a higher class than other soap, not toilet soap. In other words they put it in a toilet soap class—not perfumed soap or highly scented soap, but they recognized the right at that time to separate soaps and put them into different classes; and shortly after the Commission was created the Andrews Company brought a proceeding, the object of which
722 was to have their soap carried as the Proctor & Gamble soap, the Ivory soap. They said that that Ivory soap was as much toilet soap as theirs. They went on to say that the ingredients of their soap were no more expensive than those used by Proctor & Gamble in the manufacture of their soap and that there was no greater intrinsic value, and they wanted therefore the rating of that soap for classification to be determined by those considerations; in other words, they said that all this talk about it being a toilet soap is idle; it is simply a puffing and we ought not to be charged for that kind of wind. We ought to be charged for what the thing is. Now, the Commission took hold of that and said, whether your soap is made of articles costing a certain amount or not and whether that is no more than the cost of the articles used by Proctor & Gamble, you do sell this soap and advertise it to the world as toilet soap, and the carriers have a right to take you at your word. No matter whether it is toilet soap in fact or not, if you hold it out as such, you must be treated as dealing in that kind of soap. It was also in evidence in that case that they got a higher price for it. It seems to me that it is important to keep those considerations before the Commission. It seems

to me that the best evidence of how they treat Ivory Soap in
723 the trade is the advertisements they use, and are we to be satisfied with the sickly kind of statements that people do come around and beg us to let them use this soap of ours which we make as a laundry soap, for toilet purposes? I do not think that meets the exigency of the case, and I think the Commission ought to be allowed to see these advertisements, for there is nothing like seeing a thing in order to know what its import is. So your Honors should let us introduce these pictures and advertisements in evidence, to see the character of the trade they reach. The Century, for instance, is only read by people who are able to pay high prices. Laundresses do not read the Century Magazine. The common people whom they seek to reach with common soap do not read the Century Magazine, and I say that this all has its reflection on the kind of soap Ivory Soap is, and I am ashamed of my friends from Cincinnati that they want to come here and base their argument on anything of that kind. I say it is one of the best toilet soaps ever used, and therefore I ask you to allow us to use these advertisements.

Mr. MATTHEWS: If your Honors please, the petition filed
724 by Proctor & Gamble asks that the classification on common or laundry soaps, which was advanced January 1st from sixth to fifth class and from fourth to 20 per cent. less than third class be restored. There is no allegation of the petition which can be twisted into an allegation or a prayer that the classification on Ivory Soap be changed. We say nothing about it.

Mr. GILL: The Commission have already been told that it is used as a common or laundry soap.

Mr. MATTHEWS: We have asked that the things which the railroads carry as common or laundry soap be put back where they were before. As I understand the gentleman's contention, he selects one of our brands which we say and which our witnesses say is manufactured by laundry soap methods and is used largely for laundry purposes and also for toilet purposes, and he would concentrate your attention upon that and offer advertisements recommending it to the public for toilet purposes, and as having some bearing upon the question whether or not toilet or laundry soaps should not be reduced in classification. That is the way I understand him and the position he takes. Now, is it any answer? Can it have any bearing?
725 Is it relevant to the inquiry here, if we were piano makers and were asking that pianos be reduced in classification—would it lie in the mouths of the railroad companies to come here and say, why here is a piano which is worth five times as much as some other pianos. You make that piano. Therefore, the general run of pianos ought not to be reduced. Is it any answer to the complaint against the high rating of pianos in general that some one piano is very much superior to the rest and should not be reduced? Perhaps if the classification was of nothing but that one article, that might be a reason, but he has selected out one brand of this complainant and offers it here for that purpose, and if it is not relevant for that purpose it is not relevant at all. Now, then, compare the value of that one brand of soap with the value of the vast carloads

of soap of cheaper quality which are being carried in this classification territory.

Mr. MAXWELL: You cannot compare it.

Mr. MATTHEWS: What is the object of it to select out one brand that way? I can understand the position of the gentleman when I see counsel resorting to that kind of proof. It is merely proof to my mind that they have not anything else. Now, that is the logic of it. It is not relevant to this inquiry in which we seek to have
726 common soap reduced.

The CHAIRMAN: Perhaps not. If it has any value, it is extremely remote. I understand it may be contended by the other side that this must be looked at as to the entire advantages you get out of the classification. If your product of a valuable description, which brings a higher price, and is manufactured at great profit is included in the rate at which soap is carried under this classification, that is a proper thing for the Commission to take into account. So, in order that we may be fully advised of the value and merit of this particular sort of soap, they seek to show the estimate which the complainant itself puts upon it in its advertisements to the public. Now, it is extremely remote, but we are disposed to be and are very liberal on all questions of evidence. We want to take into account every fact which can possibly bear upon the determination of any question. So I think we will overrule your objection and let that go in. I trust that Mr. Maxwell will not burden the record with too much of this.

Mr. MATTHEWS: My honorable friend who was counsel in the former case, I think, brought several hundred pages of depositions to show that Ivory soap was toilet soap and not laundry soap,
727 and when your Honors' predecessors were apprised of the point that was to be made on it they would not allow it.

The CHAIRMAN: The precise advertisement I believe was one that appeared in the Century for this year.

Mr. MAXWELL: (producing advertisement) I think that is it.

The same is hereto annexed and marked Exhibit No. 9—Maxwell.

Mr. WARRINGON: You will allow us to interpose an objection on the ground of irrelevancy.

Mr. MAXWELL: Here is one from Harper's Magazine for March 1900.

The same is hereto annexed and marked Exhibit No. 10.—Maxwell.

Mr. MAXWELL: Harper's for February 1900.

The same is hereto annexed and marked Exhibit No. 11.—Maxwell.

Mr. MAXWELL: Harper's, May 1900.

The same is hereto annexed and marked Exhibit No. 12.—Maxwell.

Mr. MAXWELL: And here is one from the Baltimore Herald of the day before yesterday.

728 The same is hereto annexed and marked Exhibit No. 13.—Maxwell:

Mr. MAXWELL: I will content myself with offering those. What I want to call attention to is the character of the magazine in which

the advertisement appears, which your Honors know. The character of the advertisement is shown by high class illustrations, and also the dainty uses to which this soap is put. Can you furnish us a statement, Mr. Macdonald, of the actual loading of the cars?

Mr. MACDONALD: Yes, sir; I have that here.

The CHAIRMAN: Will your cross examination of Mr. Macdonald occupy considerable more time?

Mr. MAXWELL: I cannot get through this afternoon.

The CHAIRMAN: We will suspend at this point until ten o'clock to-morrow morning.

At 4:45 o'clock p. m. the Commission adjourned until 10 o'clock a. m. June 22, 1900.

729 Third Day.

10 O'CLOCK A. M.—*June* 22, 1900.

The CHAIRMAN: You may proceed.

Mr. MAXWELL: Mr. Macdonald, will you resume the stand.

Mr. MACDONALD resumes the stand.

Mr. MAXWELL: I asked you at adjournment last night if you had a statement showing the loading of your cars?

Mr. MACDONALD: I could submit that in this way. We expect to present here the bills of our loading. It shows our carload loading.

Mr. MAXWELL: Can you show it now?

Mr. MATTHEWS: This might be as good a time as any, may it please your honor to refer to one subject which we omitted in our examination, and that is the submission of our statement with reference to the subject of reparation. The prayer of our petition includes a prayer for reparation, alleging that we have made certain shipments over these roads and they amount to so much per month, and we state that they will amount to such and such a sum at the time of this hearing; at least to a sum equal to a sum multiplied by the time intervening up to the time of this hearing, and we ask

730 leave of your honors to interrupt the cross-examination this morning for a long enough time to put in proof in that respect, so that counsel might have possession of all of our direct examination before proceeding with the cross-examination.

The CHAIRMAN: Is that satisfactory, Mr. Maxwell?

Mr. MAXWELL: Yes, sir.

Mr. WARRINGTON: If your honors please, in this claim for reparation one question is involved about which we are frank to say we are in doubt. We are not trying this case with any purpose of—if your honors have any doubt about the question we hope it will be resolved against us. It is that portion of the claim for reparation which may be said to grow out of traffic wholly within Ohio. Whether your power under the Interstate Commerce Act extends only to interstate traffic, and whether this is interwoven in the account is not so connected with that as to take it without the rule and provisions of the Act itself touching local matters, I may say; every one of these defendants is an interstate road, doing interstate busi-

ness, if they do not extend across the State boundaries—and I think each one of them does that. The damages we have suffered have grown out of an interstate classification which these companies have made and which is now the subject of contention. Since the instrument of damage—assuming for the moment that we are
731 entitled to damage—is of an interstate character, and that this tribunal is sitting in judgment upon that interstate scheme of classification, that the damages may be said to be the approximate result of the exercise of interstate power on the part of the defendants in this cause, and you as a tribunal under the act of congress to regulate interstate commerce may take that into consideration. Indeed every order you make necessarily and inevitably affects local commerce, local traffic incidentally with that of an interstate character. In stating this I do not think it is necessary to read anything from this statement. It is simply an itemized account of the excess which has been charged against the Proctor & Gamble Company under and in pursuance of the classifiaction in issue. It is so prepared that it is easy to distinguish between that which is interstate and the other.

The CHAIRMAN: We have no jurisdiction to award reparation for any unlawful or excessive charge made on state traffic. Carriers may agree to change their classification in the State of Ohio, or advance their rates on that article in that State. If they had done that and had not done so on interstate business the Act to regulate commerce would have afforded you no remedy whatever. The circumstance that the state and interstate change in classification took effect
732 at the same time does not change the situation.

Mr. MATTHEWS: I do not understand that that applies to their portion of through hauls which cross the State line.

The CHAIRMAN: Oh, no.

Mr. WARRENTOWN: We offer this statement.

The CHAIRMAN: What is it?

Mr. WARRINGTON: I will have Mr. Macdonald explain it.

Mr. MACDONALD: It is a bill against the C. C. C. & St. L. on interstate business amounting to $3,659.25, being the difference between the fifth and sixth class rates, and the difference between the third and fourth class rates up until March 10th and the fourth class rate and 20 per cent. below third class from March 10th up to and including May 31st.

The CHAIRMAN: What carrier is named in that account?

Mr. MACDONALD: The C. C. C. & St. L.

The CHAIRMAN: Then the statement you have there shows the difference between the amount you have paid under the existing classification and the amount you would have paid if the classification had not have been changed?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: To that carrier.

Mr. MACDONALD: Yes, sir. This is itemized, as to each individual rate.

733 Commissioner CLEMENTS: Does it show the destinations?

Mr. MACDONALD: Yes, sir; consignee, destination and way bill.

Mr. BAYLESS: Before that is introduced against the C. C. C. & St. L. we desire to object.

Mr. WARRINGTON: We are asking to introduce it. State whether your company has in each instance paid to the C. C. C. & St. L. on the through traffic the whole freight for the entire distance on through hauls?

Mr. MACDONALD: We have prepaid the freight.

Mr. BAYLESS: We object.

Mr. WARRINGTON: I believe it was paid under protest in each case, was it not?

Mr. MACDONALD: It was paid under protest in each case.

The same is hereto attached and marked Exhibit "15."

Mr. WARRINGTON: What is this statement?

Mr. MACDONALD: That is an account against the B. & O. S. W.

The CHAIRMAN: A similar statement?

Mr. MACDONALD: Yes, sir.

Mr. MATTHEWS: In every respect?

Mr. MACDONALD: Yes, sir. Shall I name the amount?

734 Mr. WARRENTON: Yes, sir.

Mr. MACDONALD: $3,280.63. You understand the Ohio business is also given here, but it is separate; so it can be disregarded.

Mr. WARRENTON: What is this?

Mr. MACDONALD: Cincinnati, Hamilton & Dayton statement, amounting to $2,238.96.

Mr. WARRENTON: What have you to say of that account?

Mr. MACDONALD: It is the same in all respects.

Mr. WARRENTON: The same as the other?

Mr. MACDONALD: Yes, sir.

Mr. WARRENTON: The payments were made under protest?

Mr. MACDONALD: Yes, sir.

Mr. WARRENTON: We offer each of these in evidence.

Mr. COLSTON: The Baltimore & Ohio Southwestern Railroad objects on the ground that it is incompetent and irrelevant.

Mr. BAYLESS: The C. C. C. & St. L. notes objections on the same grounds.

The CHAIRMAN: On what theory do you claim that it is incompetent and irrelevant?

Mr. COLSTON: I do not understand that this is a proceeding in which damages are to be assessed against the railroads. It is not on interstate business.

735 The CHAIRMAN: That would go to the defect of the evidence and the jurisdiction of the Commission.

Mr. COLSTON: That would render the testimony incompetent I think. That is the general ground that occurs to me. I do not know that I have any objection to the fact that they do not bring men here to testify to the actual occurrence.

Mr. MATTHEWS: This is the shipping manager of the firm.

Mr. COLSTON: Is that sufficiently explained? I want to be perfectly frank. There is nothing concealed about my objection. If those words do not express it, I will use any others which will be more appropriate.

The CHAIRMAN: The witness is the traffic manager and has charge of the shipments of this company and states that those amounts produced represent in each case the difference between what the company paid and what they would have paid if the classification had not been changed, and that the account is correct.

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: We will receive the evidence.

Mr. COLSTON: It may be proper in this way, to illustrate the effect of the change upon them. That may be all right, and we do not object to it on that ground. I suppose the Commission would
736 have the right to know that as a fact in the examination of that question.

The CHAIRMAN: But they offer it for another purpose.

Mr. COLSTON: Yes, sir; and if they offer it for the purpose of having the Commission render money damages against any one I object to it.

Mr. BAYLESS: I would like to ask if these bills are made up on the basis of soap shipments alone or on the entire shipments?

Mr. MACDONALD: On the soap shipments, under the soap classification of which we are complaining.

Mr. BAYLESS: Exclusively?

Mr. MACDONALD: Exclusively.

Mr. MAXWELL: On behalf of the Cincinnati, Hamilton & Dayton Railway Company I object to the statement which is offered in evidence in so far as it is offered for the purpose of supporting a finding as to the amount to be due from it to the plaintiff, or for the purpose of rendering a judgment against the company, on the ground that it is not within the jurisdiction of the Commission.

Mr. BAYLESS: On behalf of the Lake Shore & New York Central companies I object to the introduction of any of this evidence as being incompetent and irrelevant, and as not involving any question between the plaintiff and these defendants.

737 Mr. MATTHEWS: Mr. Maxwell, does your object- go to the form of proof?

Mr. MAXWELL: What do you mean?

Mr. MATTHEWS: As to the manner in which it is made up?

Mr. MAXWELL: I suppose we can hardly examine such a long statement as that now, but to facilitate the hearing, that can be examined by clerks and if any error appears upon examination, it can be pointed out later.

Mr. MATTHEWS: Mr. Bayless, does your objection go to the form of proof, as to the manner in which it is made up?

Mr. BAYLESS: I do not know anything about that, I suppose it is made up in the usual way.

Mr. WARRENTON: We stated to the court yesterday that we should be ready this morning to point out such portions of the reports of the defendants as show what we claim so that the other side will know precisely what we do claim. We are ready to do that now or later according to the pleasure of the Commission.

Mr. COLSTON: I think we had better proceed with the cross-examination of this witness.

Mr. WARRENTON: Very, well; if that meets with the approval of your honors.

Mr. MATTHEWS: Before Mr. Macdonald goes off the stand,
738 however, we want him to point out these things.

The CHAIRMAN: Is there any further questions that you want to ask now, Mr. Warrenton?

Mr. WARRENTON: Objection has been made.

Mr. MAXWELL: Will you furnish me a statement of the loading of the various cars that you have shipped?

Mr. MACDONALD: I have not that statement made up. What I said was that the carload business is separate in these bills here and that sheet would show our carload business.

Mr. MAXWELL: I cannot go through this immense mass to find out about the carload shipments.

The CHAIRMAN: Do you mean that there is a separation between carloads and less than carloads on it?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: This sheet which you have shown me on your bill against the C. H. & D. Ry. Co. shows the loading of each carload lot that you shipped over the C. H. & D. since Jan'y 1st?

Mr. MACDONALD: I think that is for the month of January alone.

Mr. MATTHEWS: The other months are shown in the same way, are they?

Mr. MACDONALD: Yes, sir.

739 Mr. MAXWELL: This shows everything that went over the roads of the three railroad companies against whom you have offered these bills?

Mr. MACDONALD: The different statements do, yes, sir.

Mr. MAXWELL: Taken altogether?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: I understood you to say that you gave a discount to dealers who took a carload lot, did you?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And that they ordinarily, in order to get the benefit of that discount, would take the minimum amount of 30,000 pounds, but would not take more than that?

Mr. MACDONALD: That is the general rule: Sometimes they take more of course.

Mr. MAXWELL: As to these four thousand six hundred and eighty four cars which you say you shipped out last year, is that all soap?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: How many cars of anything else than soap is included in these 4,684 cars?

Mr. MACDONALD: I have not that separated and could not tell you.

Mr. MAXWELL: Do you mean that you have made no statement of that?

740 Mr. MACDONALD: I have not.

Mr. MAXWELL: It would be very easy for you to ascertain would it not?

Mr. MACDONALD: I could ascertain it.

The CHAIRMAN: Then your statement yesterday of cars received and sent out includes all of your business?

Mr. MACDONALD: All of it; yes sir. Our statistics are made up in that way.

The CHAIRMAN: And you have no statement showing how many carloads of soap were shipped out during that year?

Mr. MACDONALD: No, sir; but I could arrive at it in a very short space of time by counting these statements.

Mr. MAXWELL: This is since the 1st of January, 1900?

Mr. MACDONALD: I mean I could arrive at it for those five months.

Mr. MAXWELL: You could not for the time you have given the gross tonnage?

Mr. MACDONALD: No, sir; not without going over the records.

Mr. WARRINGTON: You can give the total tonnage of the soap business?

Mr. MACDONALD: Yes, sir.

741 Mr. MAXWELL: What was the total tonnage?

Mr. MACDONALD: Fifty-five thousand tons.

Mr. MAXWELL: How many cars?

Mr. MACDONALD: Do you want me to make simply an arbitrary computation on that?

Mr. MAXWELL: I want to know the fact.

Mr. MACDONALD: I do not know how many cars.

Mr. MAXWELL: How many tons of glycerine did you ship?

Mr. WARRINGTON: I object.

The CHAIRMAN: That is proper in cross examination.

Mr. WARRINGTON: Just one moment. The glycerine business is in another class; it is totally distinct from this. It cannot by any possibility throw any light upon what we are investigating, and the reason I asked the witness the tonnage of soap was—I did not realize at the time he gave the number of cars that it included anything other than soap. The glycerine business is just as distinct from anything connected with this cause as if it belonged to another company.

The CHAIRMAN: It seems to me that it is not beyond the range of legitimate cross examination. You say, Mr. Macdonald, that your shipments of soap amounted to 55,000 tons?

Mr. MACDONALD: Yes, sir.

742 The CHAIRMAN: Carloads and less than carloads?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Can you state how much of that was carloads and how much was less than carloads?

Mr. MACDONALD: To determine that took several months off our books; that is, the percentage which was carloads and the percentage less than carloads, and those percentages were 65 per — carloads and 35 per cent. less than carloads.

The CHAIRMAN: And you believe that is a fair average during that year?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Of shipments in carloads and less than carloads?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Can you answer about glycerine?

Mr. MACDONALD: I cannot.

Mr. MAXWELL: Have you no knowledge about that?

Mr. MACDONALD: I could not make any statement that would have any value.

Mr. MAXWELL: What was your tonnage of stearic acid?

Mr. MACDONALD: I could not tell you.

Mr. MAXWELL: Have you no knowledge?

743 Mr. MACDONALD: No, sir.

Mr. MAXWELL: Or of candles?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Or red oil?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: No knowledge as to any of them at all?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Do you know what your tonnage of your soap was in 1890?

Mr. MACDONALD: It was less than it is now. I have not the actual figures in my mind.

Mr. MAXWELL: Suppose I should refresh your recollection and ask if it was 28,000 tons.

Mr. MACDONALD: I could not say whether that was correct or not.

Mr. MAXWELL: Have you no knowledge about that? Can't you tell the Commission whether your tonnage in 1890 was not about 28,000 tons?

Mr. MACDONALD: I recall that the figures given there were 56,000,000 pounds of soap net. My figures are gross.

744 Mr. MAXWELL: In other words, your soap tonnage approximated an increase of double the amount in the past ten years?

Mr. MACDONALD: Not quite that.

Mr. MAXWELL: Out of this soap tonnage of 55,000 tons, how much was Lenox Soap?

Mr. MACDONALD: I will have to figure a minute. I should say in the neighborhood of 65 per cent.

Mr. MAXWELL: How much was there of these two Southern brands? I forget the attractive descriptive names you had for them—"Every Day" and "Banjo."

Mr. MACDONALD: I should say about 4,000 tons, but my figures are not very much more than a guess on that.

Mr. MAXWELL: You were giving the percentages.

Mr. MACDONALD: About 7 per cent. My figures must be taken as a great deal in the nature of a guess. I am not sure about it.

Mr. MAXWELL: Those two brands go, as I understand you, entirely into the South.

Mr. MACDONALD: Not entirely; largely.

Mr. MAXWELL: Substantially sold altogether in the South, are they not?

Mr. MACDONALD: No, not altogether.

745 Mr. MAXWELL: What proportion is sold in Official Classification territory?

Mr. MACDONALD: That I may understand you, to what brands do you refer?

Mr. MAXWELL: Banjo and Every Day.

Mr. MACDONALD: Banjo is sold nearly entirely south of the Ohio River. Every Day is sold at other places than south of the Ohio River.

Mr. MAXWELL: Tell me how much of this 4,000 tons you spoke of is sold in the territory covered by the Official Classification?

Mr. MACDONALD: That would be purely a guess. I could not tell you that.

Mr. MAXWELL: Could you tell us near enough to say whether 90 per cent. of it goes south?

Mr. MACDONALD: I would have no guess on that at all.

Mr. COLSTON: Which is the best of these brands, the Banjo or Every Day?

Mr. MACDONALD: I should judge they are about the same.

Mr. MAXWELL: How much is Model Soap of this 55,000 tons? I believe you said that was one of your brands—Model German?

746 Mr. MACDONALD: I cannot answer these questions with any degree of correctness. I might *it* hit it within 10,000 pounds; I might be way off.

The CHAIRMAN: Give the best answer you can. Mr. Maxwell must be satisfied with that. If you are able to form an estimate state what it is.

Mr. MAXWELL: You have given us two.

Mr. MACDONALD: I could not tell you what it is on Model German.

Mr. MAXWELL: Is it any substantial proportion?

Mr. MACDONALD: You must understand that it is difficult on these brands for me to remember. We sell different brands in different localities. The Model German Soap is sold in Chicago and in that neighborhood. It is a very large seller in that neighborhood and in some parts of Illinois.

Mr. MAXWELL: Now, will you kindly answer my question. Will the stenographer repeat the question.

The question was repeated.

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: It is 7 per cent.?

Mr. MACDONALD: I cannot answer.

747 Mr. MAXWELL: Ten per cent.?

Mr. MACDONALD: I cannot answer.

Mr. MAXWELL: Is it more than Banjo and Every Day?

Mr. MACDONALD: I would suppose it was about the same; but that is merely a guess.

Mr. WARRINGTON: About the same as both of them?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Give us Oleine.

Mr. MACDONALD: The sales of Oleine in my judgment are slightly

larger than the Model German; it is about the same grade of soap. One is sold in the East and the other in the West.

Mr. MAXWELL: 10 per cent.?

Mr. MACDONALD: I do not know.

Mr. MAXWELL: More than 7 per cent.?

Mr. MACDONALD: I do not know.

Mr. MAXWELL: I understand you to say that Model German is about seven—about the same as Every Day and Banjo.

Mr. MACDONALD: I would like to give you that information, but with thirty brands of soap it is impossible for me to remember the exact amount we sell of each.

Mr. MAXWELL: Do you think it is more than Model German?

748 Mr. MACDONALD: I think it is quite considerably more than Model German.

Mr. MAXWELL: Give us some of the other principal brands. Do you think Oleine would be enough more than Model German to make it 8 per cent.? I want them all.

Mr. MACDONALD: I do not know.

Mr. MAXWELL: Now, which is the next best seller?

Mr. MACDONALD: Japan Olive, is another.

Mr. MAXWELL: How much is that; what proportion of your total tonnage?

Mr. MACDONALD: About the same as Banjo.

Mr. MAXWELL: That would be 7 per cent., then.

Mr. MACDONALD: I do not say it would be 7 per cent. I said it would run about the same as Banjo. I gave Banjo and Every Day together.

Mr. MAXWELL: What would you put Japan Olive at?

Mr. MACDONALD: I could not estimate the percentage of it at all.

Mr. MAXWELL: Would you say 3 per cent.?

Mr. MACDONALD: No.

Mr. MAXWELL: Well, what is next to Oleine?

Mr. MACDONALD: I gave a price list. Perhaps I had better

749 read off the brands of soap. Town Talk is another brand.

Mr. MAXWELL: What is the proportion of that?

Mr. MACDONALD: I do not know.

The CHAIRMAN: Mr. Maxwell, we are not disposed to limit your cross examination, but we do not see the importance of going into their sales of the different kinds of soap.

Mr. MAXWELL: In ascertaining the effect of this classification on Procter & Gamble it seems to me to be important to know what classes of soap it affects. It appears that it does not affect Banjo and Every Day, at least to any appreciable extent.

The CHAIRMAN: Why?

Mr. MAXWELL: Because its use is in Southern territory. I want to see how far it affects Ivory Soap. I have already gotten up nearly to 90 per cent. Can't you give us any figures that are at all satisfactory for these proportions? Are you entirely ignorant about it? How did you get 65 per cent. for Lenox?

Mr. MACDONALD: I know more about that.

Mr. MAXWELL: In arriving at that proportion you had to consider what else was sold besides Lenox.

Mr. MACDONALD: No.

750 Mr. MAXWELL: How did you get at your percentage of 65 per cent. for Lenox if you did not consider that?

Mr. MACDONALD: I understand your question to be the percentage of 55,000 tons that was Lenox. That was what I aimed to give you.

The CHAIRMAN: You said it was 65 per cent.

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How did you get at that 65 per cent. if you cannot tell anything about the percentage of the other brands?

Mr. MACDONALD: The Lenox is our leading brand, and naturally my knowledge of it is very much more definite than the odds and ends of other brands that we sell all over the country.

Mr. MAXWELL: What is the percentage of Ivory?

Mr. MACDONALD: I think I stated it at 20 or 25 per cent.

Mr. MAXWELL: Going on Mr. Procter's statement?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: You have not made any statement?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: You have not prepared any statement to show this Commission what percentage of your shipments were Ivory Soap?

Mr. MACDONALD: No, sir.

751 Mr. MAXWELL: You could do it very readily, couldn't you?

Mr. MACDONALD: If I had the figures.

Mr. MAXWELL: At home you could have done it?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Do you say you have only one distributing agency?

Mr. MACDONALD: I said we only had one point at which we reshipped our soap, if that is what you mean by "agency."

Mr. MAXWELL: And that was Boston?

Mr. MACDONALD: Boston.

Mr. MAXWELL: Do you have an agent in New York?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: A warehouse?

Mr. MACDONALD: Well, I beg leave to amend my answer. We have a man there who is an exclusive dealer in our soap, and for the purpose for which you want the information I presume he is our agent.

Mr. MAXWELL: You ship to him in carload lots, don't you?

Mr. MACDONALD: Yes, sir.

Mr. *Macdonald:* Does he buy the soap from you?

Mr. MACDONALD: Yes, sir.

752 Mr. MAXWELL: And as an individual owns it?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And sells again?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: As an individual?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And has the profits on those sales?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Then it is an agency of Procter & Gamble?
Mr. MACDONALD: I stated that.
Mr. MAXWELL: Is it or is it not?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Where does he sell the soap that he gets?
Mr. MACDONALD: He distributes it to grocers in New York and Brooklyn, but does not make any shipments outside.
Mr. MAXWELL: How long has that been so? Did he formerly distribute from New York to places outside of New York City and Brooklyn?
Mr. MACDONALD: No, sir.
Mr. *Macdonald:* In what respect does that man in New York differ from the man in Boston? Both are agents for the
753 Procter & Gamble Company, are they not?
Mr. MACDONALD: I do not exactly understand the question.
Mr. MAXWELL: I would like to have the stenographer repeat the question.
The question was repeated.
Mr. MACDONALD: Do I understand as to their relations with the company or as to what they do?
Mr. MAXWELL: Their relations; yes, sir.
Mr. MACDONALD: Their relations are practically the same.
Mr. MAXWELL: Both get salaries?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: But in Boston—that agent of the Procter & Gamble Company distributes how far and to what extent?
Mr. MACDONALD: To practically the whole of New England. I might amend that by saying he distributes from Boston to all points in New England except to Maine, and we ship to Portland and he distributes it from there.
Mr. MAXWELL: He is your agent for Portland and distributes from there?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Then entire territory of New England is supplied from Boston and Portland by distribution, shipped in at carload rates?
754 Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Do you have a distributing agent at Baltimore?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: I said distributing agent. I mean agent for the Procter & Gamble Company?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Don't you have one man there that deals in Procter & Gamble soap alone?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Do you have one at Philadelphia?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: To what territory does he distribute?

Mr. MACDONALD: To the City of Philadelphia.
Mr. MAXWELL: No where else?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Does he have a warehouse?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Tell me the other places where you have distributing agencies or agents?
Mr. MACDONALD: We have an agent at Chicago.
Mr. MAXWELL: In what territory does he distribute?
Mr. MACDONALD: In the City of Chicago.
755 Mr. MAXWELL: Where else does he distribute?
Mr. MACDONALD: Nowhere else.
Mr. MAXWELL: Do you have any on the Pacific Coast?
Mr. MACDONALD: I understand you to be referring to exclusive agents. We have brokers.
Mr. COLSTON: You know what we are after.
Mr. MAXWELL: It is wholly immaterial whether you call them brokers or agents. I want the agents for the Procter & Gamble Company.
Mr. MACDONALD: We have an agent in San Francisco, but not exclusive.
Mr. MAXWELL: What in Baltimore?
Mr. MACDONALD: We have a broker.
Mr. MAXWELL: Where does he distribute?
Mr. MACDONALD: In Baltimore.
Mr. MAXWELL: And nowhere else?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Where do you have agents in any form?
Mr. MACDONALD: Pittsburg and St. Louis.
Mr. MAXWELL: Do they have warehouses?
Mr. MACDONALD: The Pittsburg man is engaged in other business. He is a broker. The St. Louis man simply has desk room.
756 Mr. MAXWELL: How does he distribute?
Mr. MACDONALD: He does not distribute at all. We ship his orders to his customers, the same as the Pittsburg man.
Mr. MAXWELL: Does he solicit orders?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Does he get a salary or a commission?
Mr. MACDONALD: Both I guess. I cannot recall; our arrangements differ between our different men. I think probably he is paid a salary based on the amount of business he does.
Mr. MAXWELL: And he sends in his orders?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: And you say you ship directly to the purchasers?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: In making shipments to St. Louis do you combine the soap intended for different purchasers there into one car?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: You do?
Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: Please repeat that question, Mr. Stenographer.

The question was repeated.

757 Mr. MAXWELL: Then you get the benefit of the carload rate?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And you do the same thing at Pittsburg?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Where else beside St. Louis?

Mr. MACDONALD: Where else do we pursue the same policy, the same method as at St. Louis?

Mr. MAXWELL: Get the benefit of the carload rate by consolidating shipments for small purchasers?

Mr. MACDONALD: Chicago.

Mr. MAXWELL: Where else?

Mr. MACDONALD: Nowhere else.

Mr. MAXWELL: Will you give us a little more definite idea of the number of lots that would be included in a shipment of a carload lot, to St. Louis, for instance?

Mr. MACDONALD: We hold our shipments, less than carload lot shipments, for Western points until we accumulate a carload of them. Then we ship them to East St. Louis for distribution.

Mr. MAXWELL: Please repeat the question.

The question was repeated by the stenographer.

Mr. MACDONALD: That might vary from twenty to thirty.

758 Mr. MAXWELL: Can you not recall instances when there was as many as 100 included in a carload on which you got the benefit of the carload rate?

Mr. MACDONALD: Yes, sir, I think so. I think we got that many in a car. That would be 700 or 800 boxes.

Mr. MAXWELL: In how many instances can you recall where shipments were made in a car to as many as one hundred different persons of less than carload lots?

Mr. MACDONALD: I do not think that is of frequent occurrence.

Mr. MAXWELL: How about this San Francisco business? Do you have a broker there?

Mr. *Maxwell:* Yes, sir.

Mr. MAXWELL: Does he get a salary?

Mr. MACDONALD: A commission only, I believe.

Mr. MAXWELL: Is he an exclusive broker for the Procter & Gamble Company?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: On soap?

Mr. MACDONALD: How is that?

Mr. MAXWELL: Does he deal exclusively for Procter & Gamble so far as soap is concerned?

Mr. MACDONALD: Do you mean is that the only soap account he has?

759 Mr. MAXWELL: Yes, sir. Is he a soap broker for any other manufacturer of soap?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: What other articles does he deal in?

Mr. MACDONALD: He has a line of Eagle Condensed Milk and Royal Baking Powder.

Mr. MAXWELL: Is he a broker for those people, too?

Mr. MACDONALD: Yes, sir. He has many other accounts which I cannot recall.

Mr. MAXWELL: But not other soap account but Procter & Gamble?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: But naturally he would not have.

Mr. MACDONALD: Well, we would not want him to have.

Mr. MAXWELL: To what points does he distribute?

Mr. MACDONALD: All of California.

Mr. MAXWELL: Where else?

Mr. MACDONALD: Nowhere else.

Mr. MAXWELL: Do you sell elsewhere on the Pacific Coast?

Mr. MACDONALD: Except in California?

Mr. MAXWELL: Yes, sir.

Mr. MACDONALD: He has a branch house or agent at Port-
760 land, and our Portland business goes to them.

Mr. MAXWELL: Then he distributes to Portland?

Mr. MACDONALD: His branch house does.

Mr. MAXWELL: Why did you say that he distributes nowhere else but California?

Mr. MACDONALD: I understood your question to be where did he distribute from San Francisco, and I said to California.

Mr. MAXWELL: Will you tell me where he distributes—from any office or branch or department, device, method or scheme?

Mr. MACDONALD: He distributes from San Francisco to all of California, and Portland the same way. I do not think, however, in either case he makes the shipments out of California. While we make all of our shipments in carload lots either direct to the customer or to them, the wholesale grocer does the distribution. That is, we sell a given quantity to the wholesale grocer and if there is any distribution on it, he does the shipping out; our agents do not.

Mr. MAXWELL: You pay only carload rates?

Mr. MACDONALD: Nothing but carloads to California, Washington and Oregon.

Mr. MAXWELL: How about territory midway between those Pacific Coast States?

761 Mr. MACDONALD: The same is true at Denver.

Mr. MAXWELL: There you pay carload rates?

Mr. MACDONALD: Yes, sir; the situation is the same as it is in San Francisco.

Mr. MAXWELL: You mean the distribution is through the agency of grocers?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Where else do you ship in carload lots?

Mr. MACDONALD: We ship to wholesale grocers all over the country.

Mr. MAXWELL: Do they distribute?

Mr. MACDONALD: They ship out to their customers.

Mr. MAXWELL: Do you sell direct to the retail grocers at all?

Mr. MACDONALD: Our men solicit orders from retail grocers, but for account of the jobbers, we do not sell to the retail trade direct.

Mr. MAXWELL: If you men procure orders from retail grocers, you allow the jobber a profit, do you?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: You pay the expenses of solicitors?

Mr. MACDONALD: Yes, sir.

762 Mr. MAXWELL: And you pay the freight?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: To the retailer?

Mr. MACDONALD: I do not understand.

Mr. MAXWELL: To the retailer.

Mr. MACDONALD: We prepay the freight.

Mr. MAXWELL: Does the jobber's profit depend at all upon whether you ship to him in carload lots for distribution or whether you ship in less than carload lots?

Mr. MACDONALD: He buys a straight carload of us, and he buys cheaper than when we make the shipments direct to a country point for him.

Mr. MAXWELL: What does he do about these orders that your solicitors take from retailers?

Mr. MACDONALD: The matter of credit is in the jobber's hands. He has got to collect the money, and we are not responsible.

Mr. MAXWELL: Does your solicitor report to the jobber?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: That he has an order from so and so?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And then the jobber forwards the order to you?

763 Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Does your solicitor make any report to you?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: What report does he make?

Mr. MACDONALD: He makes report of his sales daily and a report of what he does and an account at the end of the month showing what he sold.

Mr. MAXWELL: And he gets a commission on sales?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: As well as the broker?

Mr. MACDONALD: How is that?

Mr. MAXWELL: Your solicitor gets a commission on sales and also the broker gets a commission—the jobber?

Mr. MACDONALD: Oh, the jobber.

Mr. MAXWELL: Yes, sir.

Mr. MACDONALD: The jobber gets a profit on the soap, and we have to pay the retail soliciting man who is in our employ for his services.

Mr. MAXWELL: From whom do you get directions about shipments?

Mr. *Maxwell:* Our man who takes the order gives directions about shipments.

764 Mr. MAXWELL: And then you consolidate those shipments?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: What arrangement do you make then for getting the benefit of carload rates?

Mr. MACDONALD: We do not make any; we ship it in less than carload lots.

Mr. MAXWELL: That does not at all effect the profit of the jobber, does it. That does not make any difference, whether you ship in carload lots or less than carload lots?

Mr. MACDONALD: I stated that when the jobber bought in carload lots he was allowed carload space.

Mr. MAXWELL: Take a case of a man where he goes to a territory, your solicitor, and solicits orders from retail grocers. Do you say the jobber must approve those orders?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: He guarantees collection?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And gets a commission on them?

Mr. MACDONALD: Yes, sir, the solicitor does. The jobber gets a profit on the sale of the soap.

Mr. MAXWELL: When you do make an arrangement for consolidating those various purchases of different retail dealers, how is it done?

765 Mr. MACDONALD: We do it in Cincinnati, right at Ivorydale. As I explained, if we have 50 or 100 shipments going to west of the Mississippi River, we would put them in a car and consolidate them, making a carload of it as far as the Mississippi. We do that entirely at Ivorydale, and customers know practically nothing about it, and we pay the less than carload rates west of the Mississippi River.

Mr. MAXWELL: That is you ship to St. Louis in carload lots and west of there in less than carload lots?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How at Denver?

Mr. MACDONALD: In the case of Denver, our man goes out there and he sells each jobber in the town whatever he can. Our trade there is so that he usually makes up a carload lot and we ship it there to one of the railroads and have it distributed to these people.

Mr. MAXWELL: Does the same thing apply in the East?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Not at all?

Mr. MACDONALD: Not at all. In the case of Boston, as I have explained, we regularly reship our New England business from there and our Maine less than carload business from Portland.

766 Mr. MAXWELL: And Baltimore?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: That is a distributing point for the City of Baltimore alone, is it?

Mr. MACDONALD: For the City of Baltimore alone; yes, sir.

Mr. MAXWELL: Have you any point in the East except Boston and Portland which are distributing points for anything?

Mr. MACDONALD: No, sir.
Mr. MAXWELL: Is your price uniform?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: How does it vary?
Mr. MACDONALD: We have what we might call zone prices. The price is the same in Central territory north of the Ohio River, to the Mississippi River, on the West, Chicago on the north, and the western termini of the Trunk Lines on the East. Our price is a little higher in the East and higher on the Missouri River and at St. Paul.
Mr. MAXWELL: Then you get a higher price in New York than in Chicago or Cleveland?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: How much higher?
Mr. MACDONALD: Ten cents a box.
767 Mr. MAXWELL: In all New England?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Higher than you get at Cleveland?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: On what soap is it ten cents a box higher?
Mr. MACDONALD: On Lenox.
Mr. MAXWELL: On what else?
Mr. MACDONALD: I think the difference is about that on all the brands. It may vary a little bit.
Mr. MAXWELL: How about Ivory?
Mr. MACDONALD: Ivory, I think, is a little bit more. I think we get 25 cents a box more in the East than in the West.
Mr. MAXWELL: That is every place east of Pittsburg pays 25 cents a box more?
Mr. MACDONALD: Not Pittsburg. The line is at Altoona on the Pennsylvania and Buffalo and Erie on the Lake Shore line.
Mr. MAXWELL: What is your price west of the Mississippi River?
Mr. MACDONALD: Through Missouri and Iowa some points are 5 cents higher than our Central States prices, and by the time we reach the Missouri River we scale up to 10 cents higher; the prices on Ivory being the same.
768 Mr. MAXWELL: The price on Ivory in Missouri is the same as in Ohio and Illinois?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: The price on Lenox is how much higher?
Mr. MACDONALD: Ten cents a box.
Mr. MAXWELL: How is the price north of Chicago?
Mr. MACDONALD: The same is true there. The scale is 5 cents higher for some Wisconsin points, and by the time we reach St. Paul and Minneapolis it is 10 cents higher.
Mr. MAXWELL: On Lenox?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: On Ivory what is it?
Mr. MACDONALD: It is the same price at St. Paul.
Mr. MAXWELL: Why do you charge 10 cents more at Minneapolis and St. Paul than you do at Chicago?
Mr. MACDONALD: For two reasons; one on account of freight rates

and the other because we find it is better to have a higher price and spend more money to sell the goods.

Mr. MAXWELL: Why do you charge more in New York and Altoona than you charge in Cleveland?

Mr. MACDONALD: On account of the freight rate partially. There are other considerations.

769 Mr. MAXWELL: What are they?

Mr. MACDONALD: The competition in the East is of a little different kind than it is in the West, and we are able to make that slight advance, which is made primarily on account of the additional freight.

Mr. MAXWELL: What is the difference in the character of the competition in the East and in the West?

Mr. MACDONALD: Better grades of soap are sold in the East.

Mr. MAXWELL: Better grades than Lenox?

Mr. MACDONALD: No, sir

Mr. MAXWELL: Why do you charge 25 cents more for Ivory in Boston than you do in Cleveland?

Mr. MACDONALD: I do not know. It has always been that way, and I do not think I could account for it any way, except that it is a proprietary article.

Mr. MAXWELL: It is just as proprietary in Cleveland as it is in Boston.

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Well, that reason won't work, then.

Mr. MACDONALD: It will to the extent that the manufacturer of an article ostensibly advertised as a proprietary article is probably able to fix his price.

770 Mr. MAXWELL: I suppose Lenox has a standing reputation, has it not; largely advertised?

Mr. MACDONALD: Not anything like Ivory at all. It is a competitive brand of soap and sold on its price.

Mr. MAXWELL: Do you think the freight rate has anything to do with your increasing the charge 25 cents more for a box of Ivory in Boston than is charged in Cleveland?

Mr. MACDONALD: Something.

Mr. MAXWELL: Now, what is the next zone west? How do you get along there?

Mr. MACDONALD: We scale up from Kansas City 5 cents a box at a time as the freight rates increase.

Mr. MAXWELL: Tell us about where you scale up? At what points?

Mr. MACDONALD: That is on an actual freight basis that we figure west from there.

Mr. MAXWELL: Where is the first raise west on account of freight rates?

Mr. MACDONALD: I could not tell you that. We scale up in Kansas. We make our prices there on freight rates, and advance them as rates advance.

Mr. MAXWELL: Then you advance prices as rates advance?

771 Mr. MACDONALD: West of the Missouri River.

Mr. MAXWELL: You absorb the advance in freight rates by advance in price?

Mr. MACDONALD: West of the Missouri River and west of St. Paul.

Mr. MAXWELL: While you are jacking up prices on account of freight rates, do you limit it to the amount of freight rates, or do you put into it a little loading?

Mr. MACDONALD: I did not understand your question?

Mr. MAXWELL: Please repeat the question.

The question was repeated by the stenographer.

Mr. MACDONALD: No, sir; we are in many instances required to make it less.

Mr. MAXWELL: Is California one of those inst-nces?

Mr. MACDONALD: California prices are fixed on an entirely different basis. They are fixed on the presumption that all the shipments will go in carload lots, and we have to meet the competition there. Our price is fixed by what other people are selling soap at.

Mr. MAXWELL: What other people do you mean?

Mr. MACDONALD: There is a large sale of Eastern soap in California which comes by the way of steamer.

772 Mr. MAXWELL: I suppose the Eastern manufacturer is at a disadvantage with you. Does he ship his soap as cheap from New York as you can from Cincinnati?

Mr. MACDONALD: The all-rail rate I beleive, is the same but by the use of steamer lines he can get a very much lower rate.

Mr. MAXWELL: What is the price of your Lenox Soap in San Francisco?

Mr. MACDONALD: I could not tell you.

Mr. MAXWELL: Does your superintendency of sales agents extend to San Francisco?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: You cannot tell us the price in San Francisco of Lenox Soap?

———. ———.

Mr. *Macdonald:* Are you not consulted about that, to ascertain how much you have got to put it up on account of freight?

Mr. MACDONALD: In a general way.

Mr. MAXWELL: And yet you cannot tell?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Can't you tell anything about the price of Lenox Soap in San Francisco?

Mr. MACDONALD: No, sir. My confusion arises from the fact that we sell different sizes of Lenox Soap out there. I do not re-

773 call the price definitely there, because of my confusion on that point, and I would not be able to arrive at a conclusion that would be anywhere near correct.

Mr. MAXWELL: Is the Lenox Soap you sell at San Francisco put up in 75-pound boxes?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: What is it?

Mr. MACDONALD: 62½ net.

Mr. MAXWELL: The Lenox Soap sells at 62½ pounds on the Pacific Coast instead of 75 pounds. That means that the purchaser of a cake of Lenox Soap in San Francisco gets two ounces less than the purchaser of a cake of Lenox Soap in Cleveland?

Mr. MACDONALD: Exactly.

Mr. MAXWELL: Do you know what price he pays?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Is it higher?

Mr. MACDONALD: The price in San Francisco is generally higher on everything.

Mr. MAXWELL: And the cake of soap weighs two ounces less in San Francisco?

Mr. MACDONALD: Lenox Soap.

774 Mr. MAXWELL: Are there any soap factories in California?

Mr. MACDONALD: I cannot answer that.

Mr. MAXWELL: Have you been there at all?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: I do not think it is necessary, in order to enable you to know, to be there and see the factories. Don't you know enough about the business to know there are soap factories in California?

Mr. MACDONALD: My impression is that there are, but they are very small.

Mr. MAXWELL: How about Washington and Oregon? Are there soap factories there?

Mr. MACDONALD: I am not informed.

Mr. MAXWELL: How about Boston? Are there soap factories there?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Portland?

Mr. MACDONALD: I think they are small.

Mr. MAXWELL: Elsewhere in New England?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: The New England people manifest the
775 same enterprise in establishing that industry as in other portions of the country?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Then you have the same competition in New England as anywhere else?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: What is the price of Ivory Soap in San Francisco?

Mr. MACDONALD: I cannot answer that.

Mr. MAXWELL: Can't you give an approximation?

Mr. MACDONALD: No, I could not. My impression is that it is a little higher than in Cincinnati?

Mr. MAXWELL: How much higher?

Mr. MACDONALD: I could not say.

Mr. MAXWELL: Ninety cents a box?

Mr. MACDONALD: Nothing like that; ten or fifteen cents; perhaps 25 cents a box.

Mr. MAXWELL: Do you make the same shave on it, on the quantity of soap in a cake when it is sold as Lenox?

Mr. MACDONALD: No. I want to say that we sell Lenox Soap and whatever we sell with the amount labelled on the outside of the box—ten ounce, etc.

776 Mr. MAXWELL: Do you label it on the wrapper that the consumer gets?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Showing how much is in it?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Does the purchaser in San Francisco get the same amount of Ivory as the purchaser of a cake at Cleveland gets?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Why do you make this shave on Lenox Soap in San Francisco and on the Pacific Coast?

Mr. MACDONALD: It is simply a matter of business policy. The people seem as well satisfied with the ten-ounce cake, and it enables us to make a lower price per box than we would otherwise be able to make.

Mr. MAXWELL: Let us have the Southern zone. What do you charge our friends in the South for soap?

Mr. MACDONALD: At jobbing points in the South or to the points which I named yesterday as having commodity rates on soap, we get ten cents a box more than in Cincinnati.

Mr. MAXWELL: On Lenox?

777 Mr. MACDONALD: On Lenox. That does not apply to points in Kentucky. Of course at Louisville we make the Cincinnati price, and at cheaper rate points in Kentucky the price is the same as Cincinnati.

Mr. MAXWELL: What do you mean by cheaper rate points—where the freight is lower?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And where the freight is higher you charge ten cents extra?

Mr. MACDONALD: It has to be; yes, sir.

Mr. MAXWELL: At points where they do not have commodity rates what do you charge?

Mr. MACDONALD: Twenty cents a box more.

Mr. MAXWELL: On Lenox?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How much do you put up Ivory?

Mr. MACDONALD: Nothing at all.

Mr. MAXWELL: Do you give the people in the South the full cake of Lenox or give them the California cake?

Mr. MACDONALD: California is the only place where we make a change in size on Lenox—California, Oregon, and Washington.

Mr. MAXWELL: What is the price of Lenox Soap to the retail grocer?

778 Mr. MACDONALD: $3.00 in five-box lots.

Mr. MAXWELL: Do you fix the price at which the jobber must sell to the retail grocer?

Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: The jobber cannot buy of you if he does not adhere to the price fixed for sale to retail grocers?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Do you fix the price to the consumer?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Who does fix that?
Mr. MACDONALD: The retail grocer.
Mr. MAXWELL: Do you impose any restriction whatever upon the retail grocer?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Do you let any retail grocer sell Ivory Soap at any price he pleases
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Do you request him to sell at a certain price?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: You make no suggestion to him whatever?
Mr. MACDONALD: No, sir.

779 Mr. MAXWELL: Is not the price of Ivory Soap of retail grocers uniform?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Where does it vary?
Mr. MACDONALD: It varies as the retail grocer is willing to accept less profit.
Mr. MAXWELL: Tell me where and how much.
Mr. MACDONALD: I cannot change that statement in any way. It covers the whole ground.
Mr. MAXWELL: Take Cincinnati; is there a uniform price there of retail grocers for Ivory Soap?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: How much does it vary?
Mr. MACDONALD: Probably vary from 5 cents a cake to 4 cents a cake, or six for a quarter, on the small size.
Mr. MAXWELL: Take Boston; is the price of Ivory Soap there uniform of the retail grocers?
Mr. MACDONALD: Just the same as at Cincinnati. It works that way all over the country. Perhaps the only variation that would be noticeable would be between the country and city.
Mr. MAXWELL: The price to the retailer, I believe you said, was uniform?
Mr. MACDONALD: Yes, sir.

780 Mr. MAXWELL: And you leave the wholesale grocer to sell at any price he pleases?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: And that is so all over the United States?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Do you raise the price on Ivory Soap in California so as to cover the difference in freight rate?
Mr. MACDONALD: No, sir, not all of it,—only part of it.
Mr. MAXWELL: How much of it?
Mr. MACDONALD: I do not know; I do not recall.

Mr. MAXWELL: Then how can you tell that you did not raise it enough to cover it all?

Mr. MACDONALD: I know there is not that much difference.

Mr. MAXWELL: You have not been able to give us the price in California.

Mr. MACDONALD: I said approximately it might be from 15 to 25 cents a box higher, and the freight rate is very much in excess of that.

Mr. MAXWELL: Do you make any allowance for this short weight in California?

Mr. MACDONALD: It is all figured in the price. We simply figure that there are 62½ pounds in a box instead of 75 pounds
781 and make the price accordingly.

Mr. MAXWELL: I understand the price of Lenox Soap is from 15 to 25 cents more than in Chicago?

Mr. MACDONALD: I was referring to Ivory.

Mr. MAXWELL: How about Lenox?

Mr. MACDONALD: I cannot tell you.

Mr. MAXWELL: Then you cannot tell whether you absorb the freight rate to California on Lenox?

Mr. MACDONALD: I can tell you that we do not absorb it all.

Mr. MAXWELL: How much of it?

Mr. MACDONALD: I do not know.

Mr. MAXWELL: Do you know anything about the manufacture of soap?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Can you tell us whether there has been within the last ten years improved processes?

Mr. MACDONALD: No, sir. I would not be competent to testify.

Mr. MAXWELL: To what extent do you use garbage grease at Procter & Gamble's?

Mr. MACDONALD: Considerably.

Mr. MAXWELL: Give us a little more definite estimate if you can.

782 Mr. MACDONALD: I do not think I can give you the number of cars. It is considerable, though.

Mr. MAXWELL: Is that what you use those tank cars for?

Mr. MACDONALD: It forms a small percentage of the tank cars.

Mr. MAXWELL: How long have you been using garbage grease?

Mr. MACDONALD: I could not tell you.

Mr. MAXWELL: Began since your connection with the company?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Can't you come a little nearer to telling us?

Mr. MACDONALD: I should say perhaps five years. It is simply a guess.

Mr. MAXWELL: Do you know whether garbage grease is cheaper than grease formerly used?

Mr. MACDONALD: I do not.

Mr. MAXWELL: Do you know whether it is cheaper than tallow?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Is it?

Mr. MACDONALD: It is.
Mr. MAXWELL: How much?
Mr. MACDONALD: I think it always bears a proportionate relation to the tallow prices; it varies with the price of tallow.
783 I am not familiar with the prices.
Mr. MAXWELL: Where do you get this garbage grease?
Mr. MACDONALD: From various places.
Mr. MAXWELL: Where?
Mr. MACDONALD: Wherever they have a plant—New York, Philadelphia——
Mr. MAXWELL: Take New York. That would be a fair illustration. What is it you get and how do you get it, from New York?
Mr. MACDONALD: We get garbage grease in tank cars.
Mr. MAXWELL: Where do you get it? Do you have a contract with the city of New York to have their garbage?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Or with the concern that has the right of collecting garbage in New York?
Mr. MACDONALD: We buy it there of someone who has the contract.
Mr. MAXWELL: Do you have a contract with this person?
Mr. MACDONALD: Not now.
Mr. MAXWELL: Don't you get garbage grease from New York now?
Mr. MACDONALD: No, sir.
784 Mr. MAXWELL: How recently was it that you ceased to get garbage grease from New York?
Mr. MACDONALD: I should say three years.
Mr. MAXWELL: Can you tell us the price?
Mr. MACDONALD: I could not.
Mr. MAXWELL: You know nothing about it?
Mr. MACDONALD: Only in the way I suggested—that it is lower than tallow and bears a proportionate relation to it.
Mr. MAXWELL: Was this a new article of commerce?
Mr. MACDONALD: I do not know.
Mr. MAXWELL: Where did you get the freight rate on that? Did you arrange for the freight rate?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Didn't you know anything about garbage grease when you arranged for the freight rate more than you do now?
Mr. MACDONALD: I knew what the price was at that particular time.
Mr. MAXWELL: What was it?
Mr. MACDONALD: I do not recall.
Mr. MAXWELL: At what rate was garbage grease hauled for you?
Mr. MACDONALD: My recollection is that at the time we
785 had the contract in New York, although garbage grease was classified at fifth class, they made us a commodity rate at sixth class, being a low grade commodity.

Mr. MAXWELL: On what other things do you get commod rates?

Mr. MACDONALD: On a good many raw materials.

Mr. MAXWELL: Tell us how many of them that you get co modity rates on?

Mr. MACDONALD: Tallow.

Mr. MAXWELL: Garbage grease first.

Mr. MACDONALD: That rate is not now in effect, as I understa it. Commodity rates are mentioned in C. F. A. territory; not Tru Line territory at all.

Mr. MAXWELL: Do you get garbage grease at Pittsburg?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Is it a commodity rate?

Mr. MACDONALD: My statement was incorrect in that resp Pittsburg is right over the line in Trunk Line territory, and Buff too.

Mr. MAXWELL: You get tallow at commodity rates?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Do you use any other form of grease than g bage grease and tallow?

786 Mr. MACDONALD: Other low-grade greases?

Mr. MAXWELL: That you use.

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Do you get commodity rates on them?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Then on all greases that go into your fact you get commodity rates?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: On what don't you?

Mr. MACDONALD: On certain articles from some points.

Mr. MAXWELL: What kind of greases do you get into your tory that you do not get commodity rates on?

Mr. MACDONALD: Tallow from Indianapolis.

Mr. MAXWELL: Where else?

Mr. MACDONALD: Columbus; a great many of the points we get it from.

Mr. MAXWELL: What proportion of your tallow do you get f Indianapolis and Columbus?

Mr. MACDONALD: No large proportion.

Mr. MAXWELL: Now, will you tell us that the substantial of your grease that you get at your factory you get at commo rates?

787 Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Tell us the other things that you get c modity rates on. You have garbage grease and grease in all fo including tallow.

Mr. MACDONALD: There is a commodity rate on alkali, classifie sixth, but the rate is very much lower.

Mr. MAXWELL: A commodity rate?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How much lower than sixth?

Mr. MACDONALD: I do not know.

Mr. MAXWELL: You are traffic manager; don't you know?

Mr. MACDONALD: Well, the rate on alkali-s we have never controlled. It comes from Syracuse. I do not happen to know what the sixth class rate is. I know it is materially lower.

Mr. MAXWELL: Half?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: What is the alkali?

Mr. MACDONALD: That is the alkali that goes into the soap.

Mr. MAXWELL: Does that in term include a commercial article?

Mr. MACDONALD: It is a commercial article.

788 Mr. MAXWELL: Do all kinds of alkali come at this commodity rate?

Mr. MACDONALD: From that particular point.

Mr. MAXWELL: Now, let us have the other commodity rates.

Mr. MACDONALD: I think there is a commodity rate on our lumber that we get from Cairo.

Mr. MAXWELL: On lumber.

Mr. COLSTON: What you make the boxes out of?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Now tell us the other things. Is lumber classified?

Mr. MACDONALD: I think so.

Mr. COLSTON: Sixth class?

Mr. MACDONALD: I think so.

Mr. MAXWELL: What is your commodity rate?

Mr. MACDONALD: Two cents lower I think than sixth class; from Cairo would be 13 cents, sixth class, and the commodity rate is 11, I think.

Mr. MAXWELL: Now, let us have the other commodity rates that you get. I believe a large proportion of soap is water, or a considerable proportion?

Mr. MACDONALD: There is a percentage of water in soap,

789 variously estimated at 25 to 30 per cent.

Mr. MAXWELL: I am waiting for these other commodity rates.

Mr. MACDONALD: I do not recall any.

Mr. MAXWELL: Perhaps you can recall something that you put into your soap, that you use in making your soap or use in boxing your soap that you do not pay a commodity rate on.

Mr. MACDONALD: I have stated in regard to tallow already.

Mr. MAXWELL: And alkali and garbage grease, and the lumber you box the soap up with.

Mr. MACDONALD: We do not have commodity rates on garbage grease from all points.

Mr. MAXWELL: I have your answer about that.

Mr. COLSTON: Anything else besides these alkalies, lumber, grease and tallow?

Mr. MACDONALD: I do not remember any other commodity rates we have.

Mr. MAXWELL: Well, how about cotton seed oil?

Mr. MACDONALD: Cotton seed oil is like every other commodity in the South. It has a commodity rate.

Mr. MAXWELL: And the railroads affected by the Official Classification get no haul out of that?

Mr. MACDONALD: No.

790 Mr. MAXWELL: How about salt? That goes into soap, I believe.

Mr. MACDONALD: I don't know whether the rate on that is classified or not. I believe it is a commodity.

Mr. MAXWELL: How much of a reduction from sixth class is salt?

Mr. MACDONALD: I could not tell you. We buy the sale delivered at Ivorydale. I do not remember the figures.

Mr. MAXWELL: Rosin?

Mr. MACDONALD: Rosin comes exclusively from the South and on a commodity rate.

Mr. MAXWELL: Lard?

Mr. MACDONALD: You understand—I supposed you did understand—that in relation to tallow and grease that the rates published between Chicago and the Ohio River cover a group of those articles that are in your mind,—tallow and grease.

Mr. MAXWELL: Is there anything that you use that you do not get a commodity rate on? If so, what?

Mr. COLSTON: That you bring in there.

Mr. MACDONALD: Only a portion of these articles which I have named that do not take commodity rates. The other things would be small I think.

791 Mr. COLSTON: Practically everything that goes in there gets a commodity rate?

Mr. MACDONALD: No.

Mr. MAXWELL: We mean substantially.

Mr. MACDONALD: We bring a great deal of tallow from the East on which we do not get commodity rates and cocoanut oil from the East on which we do not get a commodity rate.

Mr. MAXWELL: How do you ship cocoanut oil?

Mr. MACDONALD: It comes in ships to New York and Newport News.

Mr. MAXWELL: It is shipped by water.

Mr. MACDONALD: We get a differential rate from New York; that is, not a commodity rate; it is a classified rate the same as the other.

Mr. MAXWELL: Well, I suppose you use considerable coal.

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: How do you get that?

Mr. MACDONALD: At a commodity rate.

Mr. MAXWELL: What is the rate you pay on coal?

Mr. MACDONALD: I do not know; we buy delivered. I do not know.

792 Mr. MAXWELL: Can you tell us whether it is a pretty low rate?

Mr. MACDONALD: I do not know, in answer to that.

Mr. MAXWELL: I believe you have already told us that you make

no difference in price of soap either to the jobber or consumer as to whether it is green or dry, whether it contains 30 per cent. of water or 20?

Mr. MACDONALD: No; you understand the way that soap is made it is made to weigh in excess of its net weight, averaging it as well as possible so that by the time it reaches the trade it will be the net weight marked on the boxes. The variation on that is slight.

Mr. MAXWELL: I had a notice of what purports to be a notice given by Mr. Lautz, the chairman of the Buffalo meeting, to the railroads, appointing Mr. Jennings as their representative, on which the name of Procter & Gamble appears to have been erased. Do you know anything about that? Was that done by your direction?

Mr. MACDONALD: I can explain that very fully.

Mr. MAXWELL: I have already suggested, Mr. Macdonald, that if you will confine your answers to my questions, we will get through sooner.

793 Mr. MACDONALD: Didn't you ask me to explain that?

Mr. MAXWELL: I would like to have the question repeated.

The question was repeated as follows:

"I hold a notice of what purports to be a notice given by Mr. Lautz, the chairman of the Buffalo meeting, to the railroads, appointing Mr. Jennings as their representative, on which the name of Procter & Gamble appears to have been erased. Do you know anything about that? Was that done by your direction?

Mr. MACDONALD: Yes, sir; it was done in this way. We were all down there and the meeting appointed Mr. Jennings our representative, and I stated to Mr. Jennings that our interest in the soap business was large and I thought I should attend the New York meeting and present an argument individually for our interest. It was understood by the meeting that my name should not appear on that list, but that I should go down there and work to accomplish our purpose.

Mr. MAXWELL: The other manufacturers appointed no one but Mr. Jennings to be there?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Were they not represented by any others than Mr. Jennings?

Mr. MACDONALD: Mr. Colgate was in there for a little while one day I recall.

794 Mr. MAXWELL: Was it because your interests might be different from that of other manufacturers that you went there?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Or because you did not trust Mr. Jennings to represent you?

Mr. MACDONALD: No.

Mr. MAXWELL: What was it?

Mr. MACDONALD: Because our interest was large. I was exclusive freight man and I did not think it would be proper for me to delegate my duties to another person.

Mr. MAXWELL: Are you the largest manufacturers of soap in the United States?

Mr. MACDONALD: I do not know.

Mr. MAXWELL: Do you know of any larger?

Mr. MACDONALD: I should say we were one of the largest.

Mr. MAXWELL: Do you know of any larger?

Mr. MACDONALD: No.

Mr. MAXWELL: Do you know of any as large?

Mr. MACDONALD: I cannot answer that.

Mr. MAXWELL: I understood you to say yesterday, Mr. Macdonald, that there were other instances of terminal facilities provided by manufacturers which were compensated as liberally as the
795 so-called terminal facilities at Ivorydale. Will you please let me know where they are and where those instances occur?

Mr. MACDONALD: The statement was that our allowances at Ivorydale were equal to switching charges, bearing from $4 to $6 per car. The Street Connection Railroad in Cincinnati, which belongs to the Panhandle Road, charges simply for the transferring of freight over the tracks, not over a half mile long, $4 for one distance and $3.50 for another distance. My comparison is with that.

Commission- CLEMENTS: Where is that?

Mr. MACDONALD: In Cincinnati. It is what we know there as our Street Connection track.

Mr. MAXWELL: That is a railway over a public street, is it not?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And is the only means of making the connection across the City of Cincinnati?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: It cannot operate in the day time can it?

Mr. MACDONALD: I do not know. They have been trying to get that through the Council.

Mr. MAXWELL: You do not know whether it has succeeded? You know it has a franchise granted by the City of Cincinnati to operate a railroad on a public highway in the City of Cincinnati at night time?

Mr. MACDONALD: No.

796 Mr. MAXWELL: Then you do not know anything about it?

Mr. MACDONALD: Yes, sir. I have shipped freight over the Street Connection Track and know approximately the length of their track and what their charge is.

Mr. MAXWELL: I want to know whether the franchise is limited to operation at night?

Mr. MACDONALD: I do not know how it is now. It used to be operated at night only.

Mr. MAXWELL: Do you know what consideration the company pays the City of Cincinnati for the franchise?

Mr. MACDONALD: No; it is my impression that they pay nothing for it.

Mr. MAXWELL: Do you know anything about it?

Mr. MACDONALD: Not positively.

Mr. WARRINGTON: Do you mean that there is any ordinance to that effect by which payment is made?

Mr. MAXWELL: Yes, sir. We ask to have the witness's statement of his impressions stricken out. What is the length of that track?

Mr. MACDONALD: It may be a mile long. It is my im-
797 pression, though, that the minimum difference for transferring freight for which they make the charge of $3.30 is hardly that long.

Mr. MAXWELL: What is the termini of that connection track?

Mr. MACDONALD: The Pennsylvania line on one side and on the other side the B. & O. S. W. and the C. C. C. & St. L. I am not sure whether they reach the C. H. & D., or not.

Mr. MAXWELL: Do you mean to tell the Commission that that distance is less than a mile and a half—or a mile?

Mr. MACDONALD: It is from Smith Street to the public landing.

Mr. COLSTON: The Panhandle depot?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: Where?

Mr. MACDONALD: Third and Butler?

Mr. COLSTON: Did you tell the distance from Smith Street to Third and Butler?

Mr. MACDONALD: I said a mile.

Mr. MAXWELL: I should think it was almost three miles. Now, is that the only instance with which to compare the charge made for the so-called terminals at Ivorydale?

Mr. MACDONALD: I know of private arrangements enjoyed
798 by some individuals, but would not care to mention them.

Mr. MAXWELL: Do you — whether Fairbanks & Co., has terminal facilities, switching facilities?

Mr. MACDONALD: I have no knowledge of that at all.

Mr. MAXWELL: You have never been at their factory?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Have you prepared any statement showing the maximum increase per box of this new classification?

Mr. MACDONALD: No, sir; no I could figure it out?

Mr. MAXWELL: Then you have not heretofore made any such statement?

Mr. MACDONALD: I have made calculations for my own information, but I have no tabulated statement showing it.

Mr. MAXWELL: I did not ask you for a tabulated statement. I asked you whether you had made out a statement, so that you could tell us what the maximum increase is which results from this new classification, per box.

Mr. MACDONALD: The increase to St. Paul and Minneapolis in carloads, would be from 7 to 8 cents per box.

Mr. MAXWELL: 7 to 8 cents?

Mr. MACDONALD: Yes, sir; carloads.

Mr. MAXWELL: How much of that is in Official Territory, which I believe ends at Chicago?

Mr. MACDONALD: It is all under the Official Classification.
799 Mr. MAXWELL: I did not ask you that.

Mr. WARRINGTON: I object to counsel's interference, the

witness is entitled to polite treatment. There could not be anyhing more responsive than that.

Mr. MAXWELL: I do not care about getting into any controversy with Mr. Warrington, who is the pink of politeness. I want to get the witness to state precisely what I ask. I want to know what this maximum increase is in Official Territory.

Mr. WARRINGTON: He was asked what part of it. He says all.

The CHAIRMAN: He was asked, as I understand, for the maximum increase, per box, in the Official Territory. He was first asked as to the maximum increase generally, and the said St. Paul and Minneapolis was 7 or 8 cents per box. Now, I understand he is asked what part of it is in Official Territory.

Mr. MAXWELL: Will the stenographer repeat the question.

The question was repeated as follows:

"How much of that is in Official Territory, which I believe ends at Chicago?"

Mr. MAXWELL: I did not ask as to official classification but as to Official Territory.

Mr. WARRINGTON: If there is any difference I would like to know what it is.

The CHAIRMAN: Do you know, Mr. Macdonald, whether the entire difference of 7 or 8 cents per box on shipments to St. Paul results from the change in classification?

Mr. MACDONALD: Entirely.

800 Mr. MAXWELL: How much of that goes to the railroads in Official Territory?

Mr. MACDONALD: I do not know. That would require a knowledge of the railroads companies' percentages.

Mr. MAXWELL: What is the fifth class rate from Cincinnati to Chicago?

Mr. MACDONALD: 15 cents.

Mr. MAXWELL: What is the sixth class rate?

Mr. MACDONALD: 12 cents.

Mr. MAXWELL: Are you able to tell the Commission whether the increase in Official Territory was but 3 cents?

Mr. MACDONALD: No, sir that is not the fact.

Mr. MAXWELL: How do you know it is not a fact?

Mr. MACDONALD: Because the official classification applies and the rate was advanced from 25 to 33½ cents?

Mr. WARRINGTON: Between what points?

Mr. MACDONALD: Between Cincinnati and St. Paul.

Mr. MAXWELL: Do you — whether that is a combination of rates between Cincinnati and Chicago and Chicago and St. Paul?

Mr. MACDONALD: No, it was a t-rough tariff.

Mr. MAXWELL: Don't you know it is a combination of the tariffs made up of the tariff in Official Territory and territory north?

801 Mr. MACDONALD: No.

The CHAIRMAN: Let me understand. St. Paul is not in Official Territory.

Mr. MACDONALD: The official classification applies there.

The CHAIRMAN: From Cincinnati?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Does it from Chicago?

Mr. MACDONALD: No, sir; it does not. I understand that the compe-tion of the Soo Line coming in from the East makes the official classification apply at St. Paul and Minneapolis.

The CHAIRMAN: Then this change in the classification did not operate to change the classification from Chicago to St. Paul?

Mr. MACDONALD: No, sir.

The CHAIRMAN: It is operated to increase the rate from Cincinnati to Chicago 3 cents?

Mr. MACDONALD: Yes, sir; on local shipments.

The CHAIRMAN: It increased it 3 cents?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: How much did it operate to increase it on shipments from Cincinnati to St. Paul?

802 Mr. MACDONALD: It increases it 8½ cents per hundred, because it has a scale of rates in which the difference is, between the sixth class rate and this scale, 8½ cents. The Chicago rate remains the same, and our rate is advanced 8½ cents per hundred. That does not all occur south of Chicago, but is all caused by the change in the official classification.

Mr. MAXWELL: Will you please tell me the maximum increase per box, to any point in the official classification?

Mr. MACDONALD: 8½ cents per hundred.

Mr. MAXWELL: Where is that?

Mr. MACDONALD: To St. Paul and Minneapolis.

Mr. MAXWELL: I thought you said that that is not in official classification teritory?

Mr. MACDONALD: It is as far as Cincinnati is concerned.

Mr. MAXWELL: Will you take some point where the point of destination is in the Official Classification?

Mr. MACDONALD: Take a point like New York, and leaving out the 87% basis from Cincinnati, and figuring from Chicago to New York, which gives a better basis, there would be a difference of between a rate of 25 and a rate of 30 cents, or 5 cents a hundred. The rate from Cincinnati would be 87% of that, which would make it a fraction less than 5 cents.

Mr. WARRINGTON: Cincinnati to New York, then, would be from 3 to 4 cents increase?

Mr. MACDONALD: Nearer 4 cents.

803 Mr. MAXWELL: 87½ per cent. of 5 cents?

Mr. MACDONALD: 87 per cent. of 5.

Mr. MAXWELL: 87 per cent?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Can you tell us what it is per box?

Mr. MACDONALD: I said per box 4 cents, or a fraction under 4 cents from Cincinnati.

Mr. MAXWELL: I thought you gave per hundred pounds.

Mr. MACDONALD: That is 5 cents, and reduced to the box of 83 pounds it is four and a fraction cents, and Cincinnati would be 87 per cent. of that.

Mr. MAXWELL: Then you cannot give us the figures?

Mr. MACDONALD: I will be very glad to.

Mr. MAXWELL: I want the maximum increase to you per box for transportation to any point in the Official Classification Territory.

Mr. MACDONALD (after making calculation): I make it 3¾ cents from Cincinnati to New York.

Mr. MAXWELL: Per box?

Mr. MACDONALD: Per box of Lenox.

Mr. MAXWELL: How much is it on Ivory?

Mr. WARRINGTON: Do you understand this question, Mr. Macdonald, that he is asking you for the maximum increase per box within the Official Classification Territory. That is, the highest increase that is made. If you do understand it, it is all right, if you do not, I want you to carry that in your mind.

804 Commissioner YOEMANS: Let the question be read.

The question was repeated by the stenographer.

The CHAIRMAN: I understood the witness to name New York as the point of his illustration.

Mr. COLSTON: He did; yes sir. At least that is the point he selected.

Mr. MAXWELL: I supposed the rate was higher to Boston or Portland.

Mr. WARRINGTON: I simply thought he did not understand the question.

The CHAIRMAN: At any rate it appears that the increase on shipments from Cincinnati to New York on Lenox Soap is about 3¾ cents per box.

Mr. MAXWELL: 3¼ cents.

Mr. MACDONALD: No; 3¾ cents.

Mr. MAXWELL: Did you say 3¾ cents on Ivory?

Mr. COLSTON: No; Lenox is what he is figuring on.

The CHAIRMAN: You take an estimated of 85 pounds, do you, Mr. Macdonald?

Mr. MACDONALD: 83 pounds.

The CHAIRMAN: And it is 75 pounds on Ivory?

Mr. MACDONALD: 70 pounds.

The CHAIRMAN: 70 on Ivory?

Mr. MACDONALD: 70 pounds; yes, sir, to make this answer to Mr. Maxwell's question, leaving aside the St. Paul and Minne-

805 apolis advance, I think the maximum advance will be from Cincinnati to Boston rate points, which would be 5½ cents per 100 pounds.

Mr. COLSTON: How much per box would that be on the limit and then on the Ivory?

Mr. MACDONALD: 4.58 cents per box.

Mr. COLSTON: On Ivory?

Mr. MACDONALD: No, on Lenox. I will give you Ivory in a minute (after calculating). It runs up to 3.80 on Ivory, on 10 ounce soap, and 2.80 on 6 ounce.

Mr. MAXWELL: Have you made a statement showing the average increase per box on your soap accomplished by this classification?

Mr. MACDONALD: I never figured it per box, no, sir.

Mr. MAXWELL: Did you figure it any other way?

Mr. MACDONALD: Yes, sir; per hundred. I will simplify matters by referring to carloads. It runs from a cent at points near Cincinnati to 3 cents at points generally to which we would distribute much business in Central Association Territory; there the advance runs to three cents. In the East it varies from 2.50 to the maximum figure I have named here of 5½ cents a hundred.

806 Mr. MAXWELL: Of course it is possible to know the precise average, is it not? You could make a statement, or calculation which would show just how much each box that you have sent out from Cincinnati has paid more in freight under this classification?

Mr. MACDONALD: It would be entirely possible, but a very long and difficult task.

Mr. MAXWELL: You have not done that?

Mr. MACDONALD: Not in that way.

Mr. MAXWELL: And any statement that you made would be an estimate that we could just as well make as you?

Mr. MACDONALD: No, sir; I know the volume of our business that moves. I know the rates to those points and what the increase amounts to.

Mr. MAXWELL: Where does the volume of your business move?

Mr. MACDONALD: Our heaviest volume is near Cincinnati—Ohio, Indiana, and Illinois.

The CHAIRMAN: Would that average appear by dividing those accounts here by the tonnage?

Mr. MACDONALD: It could be done, Mr. Chairman.

The CHAIRMAN: He has made up these schedules here which give the destinations, rates, weights and amounts paid and shows that if the classification had not been changed that they would have

807 paid so much less. It occurs to me that those amounts divided by the tonnage would give the average.

Mr. MAXWELL: I want to know how much this classification adds to the box. That will give the effect of it in concrete form.

The CHAIRMAN: If you know the number of boxes of soap that appear on those shipments.

Mr. MAXWELL: And that we do not know.

Mr. MACDONALD: It is shown right on the face of these statements what the advance is in cents per hundred pounds. You understand that we make a great many five box shipments, consisting of a box of Ivory, a box of Lenox and three other brands, so it would be a difficult task to reduce those to a per box basis.

Mr. MAXWELL: Your books show how many boxes of Lenox were shipped since the first of January, don't they?

Mr. MACDONALD: We could show that.

Mr. MAXWELL: There is no difficulty about that, is there?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: And they show how many boxes of Ivory?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: And every other brand?

Mr. MACDONALD: Yes, sir.

808 Mr. MAXWELL: And you could get the average per box?
Mr. MACDONALD: No, sir.
Mr. MAXWELL: Why not?
Mr. MACDONALD: Because we make a great many five-box shipments, one box of Ivory, one box of Lenox, and one box each of three other brands of soap, going to one destination. It would require an entire analysis of that to bring it down to the average. The only way to get an average rate would be to get the average advance per 100 pounds and then reduce it to the box, by taking the weight of any particular brand.
Mr. MAXWELL: What proportion of your soap business is in Ohio, Indiana, and Illinois?
Mr. MACDONALD: From 30 to 40 per cent., I should say—perhaps nearer to 30.
Mr. COLSTON: That is the volume of your soap business in Ohio, Indiana, and Illinois is about 30 per cent.?
Mr. MACDONALD: Yes, sir.
The CHAIRMAN: You are confining that statement to the soap business, I understand?
Mr. MACDONALD: Yes, sir. My figures are not accurate on that. I am simply making the best estimate I can in my mind.
809 The CHAIRMAN: From your knowledge of the business?
Mr. MACDONALD: Yes, sir.
The CHAIRMAN: Your present judgment is that it is about 30 per cent.?
Mr. MACDONALD: Yes, sir; maybe it is greater than that.
Mr. MAXWELL: In these statements you have made out against the railroad companies for excess charges you have charged the C. H. & D. with all the excess charged on shipments on which it is the initial road, have you not?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: If a shipment went over the C. H. & D. to New York you charge it with all the excess claimed?
Mr. MACDONALD: Yes, sir.
The CHAIRMAN: He says they have paid the money to that road.
Mr. MAXWELL: And I suppose we have paid our connections their share of it. Did you hunt up the statement which you promised to look up in respect to the operations of the Ivorydale & Millcreek Valley Railway Company?
The CHAIRMAN: We have here the report of that Company for the year ending June 30, 1899.
Mr. MAXWELL: Then I won't detain the witness now. That is all I want to ask.
810 Mr. COLSTON: I want you to explain a little bit more than you did about the situation of those tracks at Ivorydale—of The Ivorydale & Millcreek Valley Railway Co. You said yesterday that there was about 7 miles of track.
Mr. MACDONALD: Yes, sir. That is a close estimate of it.
Mr. COLSTON: In your report here you put it six miles, do you not?

Mr. MACDONALD: We have increased since the last report. We have built some new track.

Mr. COLSTON: You have already stated that these tracks were not in one straight line.

Mr. MACDONALD: That is right; there are switches.

Mr. COLSTON: They wind in and out among the buildings?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: You didn't have in mind yesterday exactly how many buildings there were, I believe?

Mr. MACDONALD: Not exactly; no, sir.

Commissioner YEOMANS: You said about 25 or 30.

Mr. MACDONALD: 35 or 40.

Mr. COLSTON: Did you consult with Mr. Procter last night?

Mr. MACDONALD: I did not. I would be glad to give the information. It slipped my memory.

811 Mr. COLSTON: This railroad is used for carrying your product, and also the raw materials between the various buildings where they are treated, is it not?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: That is, it is a substitute in that way for handling those things by hand, or cart or some other method—or truck or wheelbarrow?

Mr. MACDONALD: Yes, sir; I suppose so.

Mr. COLSTON: Now, when you ship out your product I understand it is concentrated in a building called a warehouse. Is that it?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: I think you said it was about five or six hundred feet long?

Mr. MACDONALD: Six hundred feet.

Mr. COLSTON: So far as soap is concerned, where is it gathered—at some one building—before it is brought from the warehouse, or at many?

Mr. MACDONALD: In several buildings.

Mr. COLSTON: How is it brought to this building?

Mr. MACDONALD: By conveyors.

Mr. COLSTON: And you don't use these tracks for that purpose?

812 Mr. MACDONALD: No, sir.

Mr. COLSTON: How does it come that you do not use these tracks for this purpose?

Mr. MACDONALD: Well, it happens that the houses in which the soap is packed are right behind the warehouse. The soap is packed on the second floor and it is practical to convey it right across.

Mr. COLSTON: That results simply from the fact of the proximity of that building to the building in which it gets its last treatment before shipment?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: How is it brought to these packing houses—over this railroad track?

Mr. MACDONALD: No, sir.

Mr. COLSTON: How is it collected there?

Mr. MACDONALD: It is a long process.

Mr. COLSTON: I don't care about it.

Mr. MACDONALD: It goes to different buildings in the process of manufacture, and they are naturally arranged so that it gets nearer and nearer the warehouse.

Mr. COLSTON: From the warehouse to the B. & O. S. W. R. R. when the soap is starting on its journey it travels over a por-
813 tion of the track belonging to the Ivorydale & Millcreek Valley Railway Co. That is how long, in feet, to the junction with the junction of the B. & O. S. W.? You said yesterday it was about 5/8 of a mile, but I want you to give as accurate a statement as to that as you can.

Mr. MACDONALD: Well, I think I underestimated it, if anything. I think it is fully 5/8 of a mile. I could not state it more closely than that unless I reduce 5/8 of a mile to feet.

Mr. COLSTON: Is that the longest distance to any of the railroad tracks, or is the distance greater to some other one of the railroads?

Mr. MACDONALD: No; that is the longest.

Mr. COLSTON: I believe you gave the other distances yesterday, of all the others.

Mr. MACDONALD: I do not think I gave the Big Four. I should say the Big Four would be a half a mile.

Mr. WARRENTON: You gave the C. H. & D. You were not asked the longest line of track, but as the bird would fly.

Mr. COLSTON: This 5/8 of a mile is along the track, is it?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: I want you to give the distance along the
814 track from the warehouse to the junction of the C. H. & D.

Mr. MACDONALD: Six or seven squares, I should judge.

Mr. COLSTON: Well, a square is about 400 feet.

Mr. MACDONALD: It may not be that much. It is like estimating many things with which you are familiar—you cannot estimate exactly in feet.

Mr. COLSTON: Please repeat the question.

The question was repeated by the stenographer.

Mr. MACDONALD: From the warehouse to where we connect with the C. H. & D.?

Mr. COLSTON: Along the track, the length of the track.

Mr. MACDONALD: It may be as much as six squares, and may be as little as four.

Mr. COLSTON: That would be from sixteen hundred to twenty-four hundred feet.

Mr. MACDONALD: I rather suspect it is nearer 1600.

Mr. COLSTON: How about the Big Four?

Mr. MACDONALD: I judge the Big Four is about a half a mile. The B. & O. S. W. may be a little more than that. I am not positive about it.

Mr. COLSTON: I want to ask you a little more about this question of garbage grease as bearing upon the expense of your raw
815 material. Did you not get a great deal of that garbage grease made from the garbage of New York City, that was made at Barren Island?

Mr. MACDONALD: We received some garbage grease from Barren Island, yes, sir.

Mr. COLSTON: Tell us about how much.

Mr. MACDONALD: I do not recall the number of cars, but a large quantity.

Mr. COLSTON: Over how many years did you receive that?

Mr. MACDONALD: My impression is for one year.

Mr. COLSTON: Only one year?

Mr. MACDONALD: That is my impression.

Mr. COLSTON: I do not want, by the use of the phrase Barren Island, to confine you to that. The thing is, over what period did you get grease made from the garbage of New York City, whether from Barren Island, or some other place?

Mr. MACDONALD: My impression is one year.

Mr. COLSTON: You began that practice about 5 years ago?

Mr. MACDONALD: That is my impression.

Mr. COLSTON: Has it increased—the use of that garbage grease?

Mr. MACDONALD: I do not think so.

Mr. COLSTON: Has it diminished?

816 Mr. MACDONALD: I should think there had not been a great deal of variation.

Mr. COLSTON: It is practically the same?

Mr. MACDONALD: I should think so.

Mr. COLSTON: Where do you get your supply now, of garbage grease?

Mr. MACDONALD: Some from Cleveland, and I believe we are getting some from Detroit. I do not know whether that contract has run out or not.

Mr. COLSTON: Do you get any from Pittsburg?

Mr. MACDONALD: We get some from Pittsburg.

Mr. COLSTON: What is the price of that stuff?

Mr. MACDONALD: I do not know. I am not posted as to the prices of all of our materials.

Mr. COLSTON: In what shape do you get it? Do you get it in liquid, gelatinous or solid form?

Mr. MACDONALD: It is liquid, I think.

Mr. COLSTON: It is loaded in tank cars as a liquid and unloaded as a liquid?

Mr. MACDONALD: I think so.

Mr. COLSTON: Is it congealed in transportation?

817 Mr. MACDONALD: I do not know.

Mr. COLSTON: It is a very cheap article, is it not?

Mr. MACDONALD: That is, you mean relatively?

Mr. COLSTON: You know what a man means by cheap—very low grade stuff, very low price.

Mr. MACDONALD: We handle several cheaper things—a good deal cheaper.

Mr. COLSTON: But this is cheap?

Mr. MACDONALD: No; not particularly so.

Mr. COLSTON: I think you understand me now. Give me a square answer. What is cheaper than this garbage grease?

Mr. MACDONALD: Cotton seed foot soap stock.

Mr. COLSTON: Do you use that?

Mr. MACDONALD: In the cheap soap that we sell in the South.

Mr. COLSTON: Does that come next to that in cheapness—the cotton seed foot soap stock?

Mr. MACDONALD: I am not sure that it does. I think there are some low grades of brown greases that come as low in price.

Mr. COLSTON: Well, this is a very low grade of grease, is it not?

818 Mr. MACDONALD: I do not think I would call it a very low grade.

Mr. COLSTON: Would you not call it low grade?

Mr. MACDONALD: I would call it a medium grade—not a low grade grease.

Mr. COLSTON: Do you know how it is made? Is it the aggregate garbage of the city, or is it selected?

Mr. MACDONALD: I do not know.

Mr. COLSTON: That is all.

Mr. BAYLESS: I do not care to cross-examine.

The CHAIRMAN: Is there anything further to be asked of the witness?

Mr. MAXWELL: Yes, sir. I want to ask the witness about this Ivorydale & Millcreek Valley Railway. I see by looking at your annual report for the year ending June 30, 1899, that you paid the Proctor & Gamble Company $36,000.00 last year.

Mr. MACDONALD: I was giving, when I spoke of $30,000.00 the fiscal year. We are not paying so much this year.

Mr. MAXWELL: I understand it was arrived at in this way, according to your statement: "The difference between an amount we estimate shortly before the end of our fiscal year as the

819 operating expense for the last month and the actual operating expenses when they come into us."

Mr. MACDONALD: May I see the report? (After examining) That refers entirely to this: that in order to close our books we estimate the amount which our factory is going to charge us for the last month's wages. In order to get it in the account of the year's expenses, we estimate it in that way. This notation was put in there by the Statistician and is from some correspondence we have had with him. It has no bearing on rental whatsoever.

Mr. MAXWELL: I see a charge of $9,000.00 for superintendence. To whom was that paid?

Mr. MACDONALD: To the Proctor & Gamble Company.

Mr. MAXWELL: Do these agents, clerks, laborers, etc., to whom was paid in the aggregate $7,822.55 devote themselves to the transportation of goods from one building to another, transferring material in process of manufacture, etc.

Mr. MACDONALD: No, they are our warehouse men and clerks in our shipping house who make out bills of lading and do their portion of the work.

Mr. MAXWELL: How about the laborers?

Mr. MACDONALD: They are engaged in conducting the transportation.

820 Mr. MAXWELL: In carting from one building to another?
Mr. MACDONALD: No, sir; they are not engaged in that.
Mr. MAXWELL: I see "Profit sharing dividends, $2,377.01." To whom was that paid?
Mr. MACDONALD: It may be readily understood that these employees are practically employees of the Procter & Gamble Company. They work right along with the Procter & Gamble Company's men and therefore are paid the same profit sharing dividend that the Procter & Gamble Company pays their men.
Mr. WARRENTON: That is the practice of that Company?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: I notice a charge of $2,500.00 for salaries of general offices. To whom was that paid?
Mr. MACDONALD: To the President, General Manager and Treasurer.
Mr. MAXWELL: Of what?
Mr. MACDONALD: Of the Company.
Mr. MAXWELL: Of the Procter & Gamble Company?
Mr. MACDONALD: No, sir; of the Ivorydale & Millcreek Valley Railway.
Mr. MAXWELL: I understood that all the cash business of this company was conducted by the Procter & Gamble Co.; was that right?
821 Mr. MACDONALD: No, sir.
Mr. MAXWELL: Who is the treasurer?
Mr. MACDONALD: Mr. J. H. French.
Mr. MAXWELL: And he is treasurer of the Procter & Gamble Co., also?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Does he keep a separate cash account?
Mr. MACDONALD: He keeps separate books.
Mr. MAXWELL: Does he keep a separate cash account?
Mr. MACDONALD: Yes, sir.
Mr. MAXWELL: Is he paid by the Procter & Gamble Co.?
Mr. MACDONALD: They pay a portion of his salary and the Railway Company a portion.
Mr. COLSTON: The Procter & Gamble Co. pays the whole thing to French, does it not?
Mr. MACDONALD: They pay him a salary just like any employee at Ivorydale.
Mr. COLSTON: Then the cash is all handled by the Procter & Gamble Co.?
Mr. MACDONALD: The cash paid to him is all handled by them until paid back.
Mr. COLSTON: Do you get a salary?
822 Mr. MACDONALD: Yes, sir.
Mr. COLSTON: You and Mr. French? Is that all?
Mr. MACDONALD: Yes, sir.
Mr. COLSTON: And all these laborers are employees of the Procter & Gamble Company, are they not?
Mr. WARRINGTON: That is paid back.

Mr. MACDONALD: Mr. Chariman, I have aswered that question ten times. I want to give that information. We paid them no wages. The Procter & Gamble Company paid the wages, and we paid it back at the end of the month.

Mr. COLSTON: Will you tell me where this cash account comes in out of which the Procter & Gamble Company pays everybody.

Mr. MACDONALD: We have a bank account and handle our business entirely distinct and draw our own checks.

Mr. COLSTON: You do not draw those checks for transportation expenses apparently, do you?

Mr. MACDONALD: Yes, sir; we give the Procter & Gamble Co. a check at the end of the month.

Mr. COLSTON: That is the check you draw?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: Is that what this man French gets his salary for?

823 Mr. MACDONALD: For general supervision of the account.

Mr. COLSTON: Have you a pay roll?

Mr. MACDONALD: No, I have not. There is one at Ivorydale.

Mr. COLSTON: Does that show the amount?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: If your honors please, to save time, I would like to put in certain pages of this report. If there is any other parts that the other side would like to have in, all right. I would like to select certain pages to save putting it in the record. We offer the following pages of the Ivorydale & Millcreek Valley Railway Company's Annual Report to the Interstate Commerce Commission, for the year ending June 30, 1899: Pages 30, 31, 35, 43, 45, 46, 47, 49, 58, 59, 61, 64, and 65. That is all I wish to ask the witness.

The CHAIRMAN: Is there any thing further to be asked of this witness?

Mr. WARRINGTON: Yes, sir. We wish to ask several things your honor.

The CHAIRMAN: We will take a recess until 2 o'clock.

At 12:45 a recess was taken.

824 After recess.

The CHAIRMAN: Proceed, Mr. Warrington.

JOHN M. MACDONALD, (resumes the stand).

Mr. WARRINGTON: Mr. Macdonald, I wish you would describe as briefly and clearly as you can the difference in conditions between points within the Official Classification territory, say in the east, and points in the Western Classification territory, say, west of the Mississippi, which makes or requires a difference to be observed in your business, so far as distributing stations are concerned. Is that question plain?

Mr. MACDONALD: The question is clear, and I will answer it. In the Trunk Line or eastern territory the rates are made, rates of freight are made, in what we might call zones.

Mr. WARRINGTON: The rates of railroad freight?

Mr. MACDONALD: Rates of railroad freight. There would be a certain territory around New York that would take New York rates and around Albany that would take Albany rates, and Southern New England generally takes Boston rates. Now, our ability to distribute from any point like New York or Boston in considering the item of profit we are to make out of it, is the difference
825 between the carload and less than carload rate to New York.

Mr. COLSTON: From Cincinnati?

Mr. MACDONALD: From Cincinnati to New York; or to give the actual figures, from Cincinnati to New York the less than carload rate would be 34 cents and the carload rate would be 26 cents. Now, as between shipping a carload to New York, where the rate would be 26 cents and shipping to a little point near New York in less than carloads from Ivorydale, the only difference would be this 8 cents a hundred, so that if the local rate from New York to this small point is more than 8 cents per hundred—from which, bear in mind we must deduct the cost of any handling done at New York, and which we estimate at 5 cents a hundred—that shows that to any point where the rate would be more than 3 cents out of New York, we could not distribute from New York at any advance.

Mr. MATTHEWS: In less than carload lots?

Mr. MACDONALD: In less than carload lots. That is, it is not profitable to make the eastern cities distributing stations, to ship there in carloads and ship out in less than carloads. It is more profitable to make the less than carload shipments direct from Ivorydale. I have already explained that to New England,
826 our practice there is not to save any money; in fact we figure that it likely costs us a little more. The practice there is on account of the time. From Ivorydale to a Vermont point, it is likely to be two or three weeks in transit, which makes it impossible for us to compete with the Boston manufacturer in time of delivery .

The CHAIRMAN: As far as the first part of your answer goes, it means this, I suppose: That the combination of the carload rate to New York and the less than carload rate out makes a greater total rate than the less than carload rate from Cincinnati to destination?

Mr. MACDONALD: Yes, sir; that is a very clear statement. In regard to Western territory, it is entirely different. In shipping to the west all of our rates practically are made on the sum of the locals on the Mississippi River, or St. Louis, we take as an instance. We find in competing with manufacturers at St. Louis or on the Missouri River it is necessary for us to take all less than carload orders which come to us from Kansas, Nebraska, Iowa, Missouri and bulk them in carloads up to East St. Louis, making the saving of 5 cents a hundred between the carload and less than carload rate. Then we pay the less than carload rates beyond the Mississippi River.
827 The CHAIRMAN: And also on this side?

Mr. MACDONALD: No sir; we cannot distribute back, because we then strike the same situation as in the east. The rates are

in zones and we would find a point 15 miles back from East St. Louis with the same rate as East St. Louis.

The CHAIRMAN: But with the territory west, the carload rate to the river plus the local out makes a lower combination, of course, than the less than carload rate from Cincinnati to destination?

Mr. MACDONALD: Yes sir; because the less than carload rate is based on the sum of the locals.

The CHAIRMAN: When you get as far west as Denver and points beyond, you do not ship at all in less than carload?

Mr. MACDONALD: No sir; we do not ship at all in less than carloads.

Mr. WARRINGTON: Explain why that is?

Mr. MACDONALD: There is a very wide difference between the carload and less than carload rate and I think that all shippers that distribute any of their commodities in California and in Colorado use the carload rates exclusively.

Mr. WARRINGTON: Is that, then, the reason why you conduct your business in California as you described this morning?

Mr MACDONALD: Yes sir.

828 Mr. WARRINGTON: Is that the whole reason?

Mr. MACDONALD: Yes sir; that is the whole reason.

Mr. WARRINTON: Now while I am on the California question, I wish to ask you how the sizes of cakes of soap which you sell in that territory compare with the sizes of other dealers in that territory?

Mr. MACDONALD: They are the same. They would have to be to compete.

Mr. WARRINGTON: Then is there any thing unusual or is it a common practice out there to sell cakes in the sizes and weights that you do.

Mr. MACDONALD: It is the usual practice by all manufacturers.

The CHAIRMAN: The custom of the trade in that part of the country is to sell a 10 ounce cake instead of a 12 ounce cake.

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: I wanted you to tell us—to make it a little clearer about the St. Paul and Minneapolis trade. Why was it that you conduct that in the way you do? I believe you said that there is a place of re-shipment?

Mr. MACDONALD: No sir; we do not re-ship from St. Paul and Minneapolis.

Mr. WARRINGTON: What is your plan? You ship through, do you not?

829 Mr. MACDONALD: We ship directly through. You refer to the business for St. Paul and Minneapolis?

Mr. WARRINGTON: Yes.

Mr. MACDONALD: We ship directly through.

Mr. WARRINGTON: Well, how do you ship the business out of there? Do you ship in less than carload lots that far?

Mr. MACDONALD: We find the same condition true to a great part of the territory in the northwest that is true at St. Louis; that is, the rates make on the sum of the locals on Chicago, and we find it

profitable to consolidate our business for Wisconsin, Minnesota, North and South Dakota and parts of Iowa; all our less than carload business for those points every few days or every week, we consolidate them in a car to Chicago.

Mr. WARRINGTON: Now, are the reasons for that the same as those you have described west of St. Louis?

Mr. MACDONALD: Exactly the same. We could not compete at all with the manufacturers out there unless we did do that.

Mr. WARRINGTON: I should have asked you a moment ago whether the same reasons prevail as those you have described in respect of New York city at Philadelphia, Baltimore and places in that region?

Mr. MACDONALD: Yes sir.

830 Mr. WARRINGTON: Now, in view of these conditions, which bring about these methods of conducting your business, what are your opportunities for using the carload rates under the new classification as compared with the opportunities of the packers in that regard.

Mr. COLSTON: Do your honors think that is a fair way to put that question?

The CHAIRMAN: Well, it is open to some objection.

Mr. WARRINGTON: It certainly is not leading. It is not suggestive of any answer, your honors?

Mr. COLSTON: It is argumentative.

Mr. WARRINGTON: No, it is not argumentative.

The CHAIRMAN: Let him state what the conditions are. He has stated what the conditions are as affecting the business of complainant. Now, he may state the conditions as they apply to what you call the packers.

Mr. MAXWELL: If he knows.

The CHAIRMAN: Yes sir.

Mr. MACDONALD: There are two or three regulations or rules of the classification which the packer can use in his business. First is the general rule by which articles taking the same rate in carloads can be mixed to make up a carload. There is another rule by which on a less than carload shipment of fresh meat the

831 packer is allowed to fill up the car with other freight, obtaining the carload rate on those articles, the only limitation being that the carload must pay the revenue of 20,000 pounds at the fresh meat rate, which it is very easy for him to accomplish.

Mr. KALLMAN: Do you state that as a matter of knowledge, that he can easily accomplish it?

Mr. MACDONALD: Yes sir; that is within my knowledge.

Mr. KALLMAN: Within your personal knowledge?

Mr. MACDONALD: Yes sir. The packers also have sub-stations all over the country. Their sub-stations are not limited to large cities in which there is a very large population, but they have them in the towns and they ship to these towns carloads of mixed meats, provisions and soap and get the benefit of a carload rate on all these articles in that way.

Mr. WARRINGTON: Can you or not reach as many points with carload lots as those opportunities give to them?

Mr. MACDONALD: No sir.

The CHAIRMAN: That is because you have not the demand for the carload quantities at small places?

Mr. MACDONALD: We have not a carload demand for simply soap, whereas they have for the many articles they handle.

Mr. WARRINGTON: Now, I wish to ask you what you mean
832 by zones in your rates or prices?

Mr. MACDONALD: We mean territory in which we make the same price. We adopted that system years ago.

Mr. WARRINGTON: Now, how long has that been in existence?

Mr. MACDONALD: Certainly as far back as 1888—perhaps farther back than that.

Mr. WARRINGTON: What I wish to ask is when were the differences in price according to zones made by your company?

Mr. COLSTON: You mean when that practice was first inaugurated?

Mr. WARRINGTON: No, when these differences were first made. That practice, he says, was inaugurated in 1888, so far as zones are concerned. I wish now to learn when the differences in price according to zones were established?

Mr. MACDONALD: At the same time.

Mr. WARRINGTON: Now, have they been maintained the same ever since up to this time?

Mr. MACDONALD: Yes, sir

Mr. WARRINGTON: State whether the increases that were made in the prices of your soap in December as to a portion and in January last as to another reached or in any way affected any of the rates of the new Official Classification?

833 Mr. MACDONALD: No sir.

Mr. WARRINGTON: Why?

Mr. MACDONALD: The advance in price was made on account of the increased cost of materials going into soap and did not nearly cover that.

Mr. COLSTON: This was all gone into in chief, I think, your honors.

Mr. WARRINGTON: It is only to meet a portion of the cross examination, and I think it is obvious. But I have no more to ask about it. Mr. Macdonald, you were asked very much about the percentages of output of the different brands of soap in which the Proctor & Gamble Company deals. Have you really any information on that subject that will enable the court to act intelligently upon it

Mr. COLSTON: We object to that—whether he has anything that would enable the court to act intelligently upon it.

Mr. WARRINGTON: Well, I think that is perfectly plain. I think the Commission know what I mean by that. Neither the Commission nor any other person can act intelligently unless they have information of a reliable character.

The CHAIRMAN: Ask him what facts he has?

834 Mr. WARRINGTON: What facts have you on that subject.

Mr. MACDONALD: Not any.

Mr. COLSTON: He is no judge of the capacity of the Commission.

Mr. WARRINGTON: No, and the Commission is not going to be misled by such a remark as that.

The CHAIRMAN: He says he does not know and is not able to give any definite or informing statement as to the relative amounts of the different brands of soap sold by the company.

Mr. MACDONALD: That is correct.

The CHAIRMAN: Except, I suppose, Mr. Macdonald, you adhere to your general statement that the Ivory soap amounts to 20 or 25 per cent. of the total soap business.

Mr. MACDONALD: I do not know that accurately. I heard our President make that statement.

Mr. WARRINGTON: What I was directing attention to, I think, perhaps, I better make clear. You were asked how much of the Lenox soap went out, what proportion of the whole; then you were asked how much as to Banjo and Everyday and Mottled German, and the like. It was those differences or those percentages that I was directing attention to at that time. Have you any informing facts on that subject?

Mr. MACDONALD: I have not.

835 Mr. WARRINGTON: There was one other question I wish to ask you about the differences in prices as between New England, Chicago and Cleveland. How long have those differences existed?

Mr. MACDONALD: As far as my knowledge goes back; that is around 1885.

The CHAIRMAN: That is, the zones in which your territory is divided have remained substantially the same?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: And the differences in prices in the zones have remained the same.

Mr. MACDONALD: Yes, sir; the same since in the 80's—back in 1885.

Mr. COLSTON: Do you mean to say 1885 or 1888. Awhile ago you said 1888?

Mr. MACDONALD: I said I could remember distinctly back to 1888 and I know in regard to New England it is 1885. I know that has been the case ever since I have been with the company.

Mr. WARRINGTON: As to commodity rates on raw materials, is there anything special or peculiar to your company on that subject? Have you any preference over any other soap makers?

Mr. MACDONALD: No.

836 Mr. WARRINGTON: Is it or not correct to say that those commodity rates are general?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: Now, if I understand it, those commodity rates are below the 6th classification?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: And they embrace nearly all, if not quite all, of the raw materials that go into soaps?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: I wish to reserve to another time to consider about this Ivorydale & Mill Creek Valley Railroad report, whether we will care to offer anything additional to that offered by Mr. Maxwell. I have not had time to look it over. I wish you would now examine or turn to the reports from the several railroad companies which were offered in evidence yesterday—turn to the Baltimore & Ohio Ralroad report, page 6.

Mr. COLSTON: For what year is that?

Mr. MACDONALD: The fiscal year ending June 30, 1899.

Mr. WARRINGTON: We offer from that the following——

Mr. MACDONALD: Page 6, showing under the head of "Traffic Movement" the average earnings per ton mile and the average earnings per freight train mile.

837 Mr. WARRINGTON: I thought we would read them right into the record.

Mr. MACDONALD: (reading from report) "Average earnings per ton per mile (cents) 1899, .390; 1898, .458; decrease .068; per cent. decrease 14.85.

"Average earnings per freight train mile, 1899, $1.33.7; 1898 $1.40.6; decrease, $0.06.9; per cent. decrease 4.91."

Com'r FIFER: When you offer that, please call attention to the page and then put in brackets what you want.

Mr. MACDONALD: We will do that.

Mr. WARRINGTON: Very well. Now, on page 7.

Mr. MACDONALD: Showing the tonnage for 1887 and the tonnage in 1899.

Mr. WARRINGTON: Mark that in brackets.

Mr. MACDONALD: I think that is all of that.

Mr. COLSTON: Your honors allow me to enter an objection to that on behalf of Mr. Bond.

Mr. WARRINGTON: Now the Pennsylvania Railroad for 1898, page 5.

Mr. MACDONALD: I desire to submit the whole page—General Income Account, Dec. 31, 1898, and the comparison with the year 1897.

Mr. WARRINGTON: Now, page 9.

Mr. MACDONALD: "The following table shows the revenue
838 and cost per ton per mile on each division operated by the company for this year as compared with 1897;" that is, for 1898 as compared with 1897.

Mr. WARRINGTON: Pages 22 and 23—first page 22?

Mr. MACDONALD: Paragraph marked "A" on page 22. Shall I read it?

Mr. WARRINGTON: Yes sir. What is that a part of?

Mr. MACDONALD: This is a part of the general remarks in the report, which are signed "By order of the Board, Frank Thomson, President."

Mr. WARRINGTON: Now, read that?

Mr. MACDONALD (reading):

"It will be noted that there has been a further reduction in freight rates, the average rate received per ton per mile being 4.99 mills. The tonnage movement, however, shows a material gain as compared with the preceding year, so that the gross earnings from that branch of your traffic are quite as large as in 1897, while through the use of heavier power and cars of greater capacity, and the improvements in your tracks and facilities consequent upon the extraordinary expenditures heretofore made in the revision of grades and alignment and improvement of equipment, the cost of movement has been reduced to 3.55 mills per ton per mile. The net earnings
839 have therefore been more than sufficient to pay your regular dividend of five per cent., and justify an appropriation to the Extraordinary Expenditure Fund of the sum of $1,800,000 to be used as hereafter more fully explained."

840 Mr. WARRINGTON: Now, on page 23—have you read that?

Mr. MACDONALD: It is an explanation of what was done with a special appropriation of one million eight hundred thousand dollars.

Mr. WARRINGTON: Just mark that. Now take the report of that company for 1899 and turn to page 5.

Mr. MACDONALD: We submit the general income account for December 31, 1899, in comparison with 1898.

Mr. WARRINGTON: Mark that. Now, page 9?

Mr. MACDONALD: We submit the table headed "Average Freight Earnings, expenses and net earnings per mile."

Mr. WARRINGTON: What is the cost per ton per mile there?

Mr. MACDONALD: This is divided up in divisions. The cost per ton per mile on the Pennsylvania Railroad Division is 0.292.

Mr. WARRINGTON: That is the report for 1899, is it?

Mr. MACDONALD: Yes sir; that is the earnings and expenses—the net earnings reduced to per ton per mile.

Mr. WARRINGTON: Now, page 17.

Mr. MAXWELL: You say one thing one moment and I understood you to say another another moment. Is that the percentage of cost of operation per mile? What does it say?

Mr. MACDONALD: It says "Pennsylvania Railroad Division, earnings per ton per mile, expenses, per ton per mile, net earnings
841 per ton per mile."

Mr. WARRINGTON: Mr. Maxwell has said that there is nothing in that report that will show the cost per ton per mile. If there is, let us know.

Mr. MACDONALD: The expense or cost per ton per mile is shown here.

Mr. MAXWELL: What does it say?

Mr. MACDONALD: "Expense," it says.

Mr. MAXWELL: It does not say "cost," does it?

Mr. WARRINGTON: Is there a difference between expense and cost?

Mr. MAXWELL: There is a very decided difference. You do not seem to appreciate it. That will be disclosed to you in due time.

Mr. WARRINGTON: I hope it will come from somebody that knows.

Mr. COLSTON: It will come from somebody that knows quite as well as Mr. Macdonald.

Mr. WARRINGTON: Now, page 17.

Mr. MACDONALD (reading):

"It will be seen by reference to the income account that the revenues, after paying the regular dividends, providing for the Sinking Fund, defraying extraordinary expenditures of
842 nearly a million of dollars, and setting aside $1,500,000 to be used for similar purposes during the current year, were sufficient to leave a surplus of more than a million of dollars to be carried to the credit of your profit and loss account."

843 Mr. WARRINGTON: Now, page 18.

Mr. MACDONALD: Page 18 is an extract from the same, as follows:

"Your attention is particularly directed to the very large increase in the tonnage over that of the previous year. The increase on your three grand divisions East of Pittsburg and Erie was nearly 16,000,000 tons, an amount greater than the whole tonnage moved over the same lines in 1875, or in any year previous thereto. It is gratifying to be able to state that the traffic was moved with exceptional regularity and dispatch, and without serious blockades either on the lines or at the terminals. But for the liberal and judicious expenditures made in recent years for extensions of third and fourth tracks, freight yards, and terminal facilities, as well as for additional locomotives of greatly increased power and freight cars of enlarged capacity, it would have been impossible to move the volume of traffic suddenly thrown upon your lines."

844 Mr. WARRINGTON: Page 19.

Mr. MACDONALD: An extract from the same, as follows:

"While the growth of your traffic and its successful movement are subject for congratulation, Your Board have to report a further reduction in the average ton-mile rate. For years the compensation of the trunk lines for moving freight traffic has steadily decreased. On your road it appears that with but one exception there has been in each year since 1889 a decrease in the rate from that of the preceding year, so that from an average per ton mile of 0.686 cents in 1889, the rate fell to 0.499 cents in 1898, and last year to 0.473, the lowest point ever reached. As may be supposed, railway managers have not seen this constant reduction without serious concern, or without making strenuous efforts to check the downward movement. These efforts have met with but little success, and although no commercial necessity has recently existed for such reductions, and certainly not during the past year, when the industries of the country enjoyed a prosperity almost unprecedented, and when the facilities of the railways were taxed to the utmost, the fall in rates has still continued. Had the railway companies not been able to meet the dimension in the ton-mile rate by a corresponding reduction in expenses, disastrous results must have followed. But there is a
845 limit, and it cannot be far off, to the possible lessening of the cost of movement. The only alternative is to arrest the reduc-

tion in revenue, which has been largely brought about by apparently uncontrollable conflicts between the railway companies, and between rival communities. It must be admitted that the situation is complicated. The problems involved in dealing with traffic questions covering so vast a territory, and affecting so many diversified interests, are troublesome and intricate, but they are not incapable of solution, and it is believed that by earnest and united effort the difficulties in the way may be met and overcome. With this end in view, and to establish closer relations between the managers of the trunk lines, it has seemed wise to your Board to acquire an interest in some of the railways reaching the seaboard, and to unite with the other shareholders who control those properties in supporting a conservative policy. This will, it is hoped, result in securing reasonable and stable rates and do away with unjust discriminations that are the inevitable results of the course that has been heretofore pursued. Aside from the indirect benefits thus sought to be gained, it is believed that these holdings will as investments be directly profitable."

846 Mr. WARRINGTON: Page 25.

Mr. MACDONALD: Page 25 is presented as showing capitalization and bonded indebtedness.

Mr. WARRINGTON: Well, mark it. Now take the New York Central.

Mr. MATTHEWS: What year is that?

Mr. MACDONALD: June 30, 1899.

Mr. WARRINGTON: Page 9.

Mr. MACDONALD: We present the summary of financial operations affecting income.

Mr. MAXWELL: On behalf of the Cincinnati Hamilton & Dayton; the Pittsburgh, Cincinnati, Chicago & St. Louis, and the Pennsylvania Railroad Company, I object to this testimony.

Mr. BAYLESS: I object on behalf of the New York Central Railroad Company to the introduction of the testimony as not being material to any issue before this tribunal.

The CHAIRMAN: That is a matter to be determined hereafter.

Mr. WARRINGTON: We offer the whole of page 9. Now, page 13.

Mr. MACDONALD: Page 13, headed "Traffic Statistics, showing the earnings per ton per mile, the expenses per ton per mile, the
847 earnings per train mile and the expenses per ton per mile, the earnings per train mile and the expenses per train mile."

Mr. WARRINGTON: I wanted to offer paragraphs "A" "B" and "C."

Mr. MACDONALD: Also "C," showing the average number of cars in freight trains on the entire system and the number of tons to a train on their different divisions.

Mr. WARRINGTON: Page 14.

Mr. MACDONALD: Comments on earnings and expenses, the rate per ton per mile——

Mr. MAXWELL: We wish especially on behalf of the Cincinnati, Hamilton & Dayton Railroad Company; the P. C. C. & St. L. and

the Pennsylvania to object to the offer of comments of some officer of the New York Central Railroad Company, on the ground that it is wholly incompetent evidence. It is a fact that should be established by him, by his production with an opportunity for cross-examination.

Mr. BAYLESS: The same objection from the Big Four and the Lake Shore & Michigan Southern.

The CHAIRMAN: Your objection is probably well founded, but we will allow the statement to go into the record, reserving any question, to be determined in connection with the decision of the case.

Mr. MAXWELL: In order to preserve the record in that re-
848 spect, I ask, on behalf of the Cincinnati, Hamilton & Dayton Railroad Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, to have stricken from the record the remarks which have been read as made by the President of the Pennsylvania Railroad Company.

The CHAIRMAN (addressing stenographer): You may note that that request is made.

Mr. MACDONALD (reading): "Earnings per ton per mile, 1899, 0.59 cents; 1898, 0.61 cents. Expenses per ton per mile, 1899, 0.41 cents; 1898, 0.43 cents. Profit, 1899, 0.18 cents; 1898, 0.18 cents. Earnings per train mile, 1899, $1.90; 1898, $1.83. Expenses per train mile, 1899, $1.31; 1898, $1.29. Profit, 1899, $0.59; 1898, $0.54. Average number of cars in freight trains, entire system, 1899 — 37; 1898 — 34. Average number of cars in freight trains, main line, 1899 — 49; not compiled in 1897-'8. Average number of tons of revenue earning freight carried per train mile: 1899, 322; 1898, 299. Average number of tons of all freight (including Company's) carried per train mile, 1899, 346; 1898, 320. Average number of tons of through freight (east and west) carried on the New York Central & Hudson River main line per train mile, 1899, 750; not compiled in 1897-'8. Average number of miles one ton carried, 1899, 184; 1898, 192."

849 Mr. WARRINGTON: That was page 13. Now, page 14.

Mr. BAYLESS: On behalf of the New York Central, I object to the latter part of it because it relates to the local part of the business of the New York Central, which is entirely foreign to any issue before this tribunal. I move to strike it from the record.

The CHAIRMAN: Pardon me, I did not understand you.

Mr. BAYLESS: I object especially, and move to strike from the record the latter part of those remarks, for the reason that it expressly states that it relates to the local business of the New York Central, which is New York business, beyond the jurisdiction of this Commission, and is not involved in any issue before this tribunal, or in the petition.

The CHAIRMAN: It may stand subject to the objection made.

Mr. MACDONALD (Reading): "The rate per ton per mile decreased from 6.1 mills to 5.9 mills. The freight earnings were $1,90 as compared with $1.83 in 1897-'8, a gain of 3.8 per cent.

"As in the previous year, excellent results were obtained in busi-

ness local to the company's system, this class of traffic showing substantial gain. The tonnage increase was 2,341,161 tons, or 12 per cent.

850 "The decrease of $382,032.63 in the year's expenses does not fully represent the extent of the economy in operation and maintenance. Notwithstanding the increase in the volume of business handled, the expense of conducting transportation decreased $448,155.05.

"The introduction of 28 new mogul locomotives, each capable of hauling 80 loaded 30-ton grain cars (making a gross weight of 3,600 tons for the train and its load), has resulted in a saving of 503,114 train miles, or 3½ per cent. decrease, although the volume of freight traffic was 8½ per cent. greater. 20 additional locomotives of the same type were ordered toward the close of the year.

"The average train load for the entire system, including company freight, was 346 tons as against 320 tons in 1897-'8. The average is, of course, much reduced by the large proportion of the mileage of branch and leased lines on which the train load is necessarily small. On the New York Central main line the average train load of through freight, east and west, was 750 tons."

851 Mr. WARRINGTON: Is that all on page 14?

Mr. MACDONALD: Yes, sir.

Mr. WARRINGTON: Have you given paragraphs "A," "B," "C," "D" and "E?"

Mr. MACDONALD: I have, yes, sir.

Mr. WARRINGTON: Now, page 15.

Mr. MACDONALD: Page 15, referring to the amount charged for maintaining the company's equipment. We refer to the paragraph which reads:

"In addition to the expense of repairs and replacements of an ordinary character, many extraordinary items are charged in this account, the most important being:

"1,000 thirty-ton coal cars with air brakes and couplers.

"Also the following, built at the company's shops: 20 cabooses, 3 flangers, 15 milk cars, 7 horse cars, 4 ice cars, 6 postal cars, 3 smoking cars, 1 composite car."

852 Mr. WARRINGTON: In view of what your honors have said, we will withdraw what we offered yesterday from the Reading and Erie, as much as we would like to have them.

Mr. COLSTON: Have you finished this offer now?

Mr. MATTHEWS: That is, on the ground that they are not parties to this suit.

Mr. WARRINGTON: I want it to appear that this is offered not only as admissions of parties to this cause through accredited agents and in reports to the stockholders of the several defendants, but also for purposes of comparison with reports which those companies have made on the same subject to this Commission and for the further purpose of comparison with the figures shown on Exhibit No. 6. That is all, gentlemen, if you have further in view of these last offers.

The CHAIRMAN: If I understood your first statement, it is this: That whereas yesterday you presented and had identified the reports

of the Reading and Erie Railroads, as well as some others, you do not now offer to read anything from them or ask to have anything from them regarded as in evidence in this case?

Mr. WARRINGTON: No, the Reading and the Erie.

Mr. MAXWELL: I want to ask Mr. Warrington, in view of his statement that he has offered these reports for the purpose of
853 instituting comparison with the reports made by the same companies to this Commission, what the comparison is; and what part of the reports made to this Commission so far as he refers to any reports of the Pennsylvania Railroad Company.

Mr. WARRINGTON: One thing is the expense per ton per mile, and the rate per ton per mile another; and the tonnage of trains and the cost per train mile.

Mr. MAXWELL: The Commission said that the tariff sheets were in evidence, but I want to know what report it is on file in this Commission you refer to, and what page?

Mr. WARRINGTON: In so far as they are shown in any way on Exhibit No. 6.

Mr. MAXWELL: There is nothing shown on Exhibit No. 6.

Mr. WARRINGTON: They are worked into Exhibit No. 6. That covers the years that are described there.

Mr. MAXWELL: Then, you compare this with Exhibit 6? Is that it?

Mr. WARRINGTON: With the figures of Exhibit 6, yes sir; which are the foundation of the conclusions we have reached there.

Mr. MAXWELL: I am not aware of anything said in Exhibit No. 6 about the Pennsylvania Railroad Company.

854 Mr. WARRINGTON: The Pennsylvania Railroad is shown in that so far as its reports to the Commission are concerned—in those averages. Of course, we do not claim, and I want that to be understood that the Pennsylvania Railroad as such and exclusive of the other roads embraced in Groups 1, 2 and 3, etc.—I do not claim that——

Mr. MAXWELL: Do you mean to claim—that is the inference I got from your statement—that there is any discrepancy between the report made by the president of the Pennsylvania Railroad to the stockholders and the report filed with the Commission? If so, I want to know what the supposed discrepancy is. I think I am entitled to it.

Mr. WARRINGTON: No, I cannot go over the whole of it now, but some gentleman kindly said from the audience yesterday to their honors that nothing could be relied upon in these reports.

Mr. COLSTON: No, he did not make it as broad as that.

Mr. WARRINGTON: Well, that they were averages or something of that kind, on the cost per ton per mile. I want to show that the officers of the Pennsylvania Company make similar reports to their stockholders, to the end that we may ascertain whether they report correctly to anybody.

Mr. MAXWELL: If your honors please, it seems to me that
855 I have asked a very plain question, about which I ought to be advised, and that is, whether the gentleman in what he has said offered these reports for the purpose of showing any discrep-

ancy between the report made by the president of the Pennsylvania Railroad Company to the stockholders and the report made by that company to this Commission. If so, I would like to know what the supposed discrepancy is and to what report made to this Commission Mr. Warrington refers.

Mr. WARRINGTON: We do not offer them to show that there is any discrepancy. We do offer them to show that what the president of the Pennsylvania Railroad Company reported to his stockholders confirms what he reported to this Commission.

The CHAIRMAN: Well, I understood yesterday something of this sort: It appears in one of the columns of that exhibit No. 6 that the average cost to the carrier in moving the traffic was set down for certain years, taken from the statistics compiled by this Commission and that those figures do not appear in our statistics subsequent to a certain date; and he wanted to supplement that in part by corresponding statements made in the reports of these companies by their own directors to their own stockholders.

Mr. WARRINGTON: That is true and that is another pur-
856 pose in this connection in offering these.

The CHAIRMAN: I had not understood so far that these reports are offered here for the purpose of showing any discrepancy between them and the reports of those companies to this Commission.

Mr. WARRINGTON: No sir.

The CHAIRMAN: But rather to supplement the latter?

Mr. WARRINGTON: Yes, sir; and to corroborate them as far as they go.

The CHAIRMAN: They differ in two respects: first, some of those reports are for the fiscal year, whereas the reports to this Commission are all for the fiscal years; and they seem to have some statement or estimate of the expense per ton per mile or per train mile which does not appear in their reports to us.

Mr. COLSTON: I would like, your honors, to offer an objection on behalf of the Baltimore & Ohio Southwestern Railway Company to all this matter contained in these various reports of these various railroads submitted by Mr. Warrington awhile ago. I do not understand why the Baltimore & Ohio Southwestern should in any manner in this proceeding be prejudiced by what it costs per ton per mile to haul freight on the New York Ceneral Railroad, where condi-
857 tions are entirely different.

The CHAIRMAN: That does not require any argument.

Mr. COLSTON: I only want to state it on the record, and I suppose it is my duty to make the same objection on behalf of the Baltimore & Ohio.

Mr. WARRINGTON: Mr. Colston, I have not had an opportunity to examine the report which you kindly said I could have of the Baltimore & Ohio Southwestern. Will you let me have that this evening?

Mr. COLSTON: Yes sir.

Mr. MAXWELL: Mr. Macdonald, you have stated to the Commission that it was cheaper for you to ship direct in less than carload rates to points contiguous to the city of New York than to ship in carload rates to New York and distribute from thence, although there

was a difference of 8 cents per hundred in the freight rate, have you not?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: I do not know what you mean by the word "contiguous." Literally that might mean something more than he said.

Mr. MAXWELL: Well, that is not material to my question—the territory he was referring to in that neighborhood.

Mr. WARRINGTON: Very well.

858 Mr. MAXWELL: Is the rate from New York City to any of the places in this so-called contiguous territory 8 cents per hundred?

Mr. MACDONALD: They exceed that in nearly all instances. It would be only very near New York that the rate would be as low as 6, and from the 8 we must take off any expense of handling.

Mr. MAXWELL: I will come to that in a moment. What distance from New York is it that the rate is 8 cents?

Mr. MACDONALD: I would have to examine my tariff. I do not know that accurately.

Mr. MAXWELL: Have you not got that picture that shows New York and the vicinity of New York?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: What I understood Mr. Macdonald to say was this: The difference between the carload and less than carload rate from Cincinnati to New York is 8 cents.

Mr. MACDONALD: Yes sir.

The CHAIRMAN: So, obviously it is cheaper to ship from Cincinnati at the less than carload rate to any point that takes the New York rate, because the less than carload rate from Cincinnati to

859 that point would be lower than the carload rate to New York plus the local less than carload rate from New York to that same point.

Mr. MAXWELL: It would depend on how much the local from New York to that point was.

The CHAIRMAN: He said that would be so to any point where the rate from New York was 8 cents, and from the 8 cents must be deducted the cost of handling at New York City, which he estimated at 5 cents a hundred.

Mr. COLSTON: I thought he said 3 cents?

Mr. MACDONALD: 5 cents.

Mr. MAXWELL: When you gave your illustrations about St. Louis and other points, how much is it you allowed for handling?

Mr. MACDONALD: The business there is different. Our shipments go out from Ivorydale marked for their final destination to the western less than carload point and the car is shipped to the coupling station, distributing point in St. Louis and distributed there.

Mr. MAXWELL: You have no handling charge there?

Mr. MACDONALD: The western road absorbs the handling charge there.

Mr. MAXWELL: In other words, you do not have it?

Mr. MACDONALD: No.

Mr. MAXWELL: You don't have any handling charge?

860 Mr. MACDONALD: No.

Mr. MAXWELL: In your answer to Mr. Warrington, saying that you had no information about these different brands of soap, the percentage they bore to the total tonnage, do you mean to say that you do not know what percentage Lenox bears to the total tonnage?

Mr. MACDONALD: I do not.

Mr. MAXWELL: Then, your statement that it was 65 per cent. or thereabouts, we are not to consider as evidence?

Mr. MACDONALD: You are not to consider that as correct, no.

Mr. MAXWELL: So that we have no evidence in this case as to the percentage of the different soaps other than that which is furnished, if any is furnished by the deposition of Mr. William A. Procter?

Mr. MACDONALD: That is correct.

Mr. MAXWELL: How do you ship your soap intended for Albany and Troy?

Mr. MACDONALD: Locally right to there.

Mr. MAXWELL: In carloads?

Mr. MACDONALD: If an individual buys a carload, we ship to him as a carload; if he buys less, we ship as a less than carload shipment.

861 Mr. MAXWELL: Do you not wait until you get enough to combine them?

Mr. MACDONALD: No sir.

Mr. MAXWELL: Not at all to Albany or Troy?

Mr. MACDONALD: No sir.

Mr. MAXWELL: How does the rate to Troy compare with the rate to New York?

Mr. MACDONALD: It is slightly less. (Referring to paper.) Do you mean carloads or less than carloads?

Mr. MAXWELL: Both.

Mr. MACDONALD: Our less than carload rate to New York is 34 cents and our carload rate 27; our less than carload rate to Albany and Troy, I find, is 34, but 5th class, carloads it is 25, one cent less than New York.

Mr. COLSTON: Do I understand you to say that you do not ship at all from New York out to any adjacent territory?

Mr. MACDONALD: That is correct.

Mr. COLSTON: All the soap you take to New York is consumed in New York and Brooklyn?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: Is it not a fact that most of your eastern shipments go to New York—I mean in volume?

Mr. MACDONALD: No sir.

862 Mr. MAXWELL: As a matter of fact, how do your shipments run to Troy and Albany—generally in carload lots, or what proportion of them in carload lots?

Mr. MACDONALD: I do not know.

Mr. MAXWELL: How do you know what rates any other soap dealer in Cincinnati gets on these various articles which you receive a commodity rate on, like tallow grease?

Mr. MACDONALD: Because I have seen the rates published in the tariffs.

Mr. MAXWELL: That is the only knowledge you have.

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: How do you know what rates the soap manufacturers at Chicago or any one soap manufacturer at Chicago gets on those articles?

Mr. MACDONALD: Where from?

Mr. MAXWELL: Any place.

Mr. MACDONALD: I do not know that.

Mr. MAXWELL: You do not?

Mr. WARRINGTON: Not from any place.

Mr. MAXWELL: How do you know what rates any soap manufacturer at St. Louis gets on any one of those articles?

Mr. MACDONALD: I know that from the tariff. I know it from Chicago from the tariff to a large territory.

Mr. MAXWELL: Your information is derived wholly from the tariff?

863 Mr. MACDONALD: Yes sir.

Mr. MAXWELL: Now, did you ever have any part in the transportation from a packer's establishment of fresh meats?

Mr. MACDONALD: No, sir.

Mr. MAXWELL: Were you ever at a packer's establishment—ever have an opportunity to observe to what extent the packing of fresh meats by packers is practiced as you described?

Mr. MACDONALD: No sir; except my general knowledge as a man familiar with the business of the country.

Mr. MAXWELL: Well, if you never were there and never had any part or connection with the packing or shipping of fresh meats, I am at a loss to know—if you could tell us I would be glad to have you—what information you have that you can furnish this Commission with respect to the easiness of that being done. I believe you said there was no difficulty about its being done.

Mr. MACDONALD: The presence of their distributing stations all over the country is something of which I have actual knowledge, as I travel a great deal and see their stations in the different towns and their refrigerator cars standing in front of them. As to

864 their using this mixed carload method, it is information which comes to me in the course of our business through the agency of our salesmen.

Mr. MAXWELL: Then you are depending on what the salesmen tell you?

Mr. MACDONALD: What the salesmen who reported to me or did report to me, tell me.

Mr. MAXWELL: Now I move to have that testimony stricken from the record.

The CHAIRMAN: It appears that he has no direct or personal

knowledge; that it is based on actual observation; but he still claims to have such familiarity with the general conduct of the business as to be certain that other goods are sent with fresh meats so as to get the carload rate. We aim not to make any finding of fact on other than competent legal evidence.

Mr. MAXWELL: Then, we have to exercise our judgment as to what the Commissioner may determine competent, legal evidence.

The CHAIRMAN: Perhaps what I said justifies that comment. I meant to indicate our disposition to be very liberal in taking testimony.

Mr. MAXWELL: That is all I wish to ask.

The CHAIRMAN: Is there any further question to be asked Mr. Macdonald?

865 Mr. COLSTON: I understand you ship in carload lots to Boston, do you not?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: And you distribute from Boston?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: What radius over New England do you distribute to from Boston?

Mr. MACDONALD: All of New England except Maine with the exception of a very few points in western Massachusetts and a few points down near New York State, to which we make shipments direct from Ivorydale.

Mr. COLSTON: Then, I understand the reason you are able to do that is because the carload rate from Cincinnati to Boston, plus the local rates from Boston to these points to which you ship out from Boston is less than the less than carload rate from Cincinnati to those points?

Mr. MACDONALD: No, sir; I stated distinctly the contrary.

Mr. COLSTON: Well, how do you come to do that—because it is more expeditious, a saving of time.

Mr. MACDONALD: That is the controlling reason.

Mr. COLSTON: Well, are there not a great many of these points in New England to which the rate is higher than the carload
866 rate—than the Boston rate, I mean?

Mr. MACDONALD: You mean there are points where they are arbitrary?

Mr. COLSTON: Yes, sir.

Mr. MACDONALD: Well, some, that number is decreasing all the time. There is not any perceptible percentage of the business.

The CHAIRMAN: You say there are points in New England taking higher rates than the Boston rate?

Mr. MACDONALD: Yes, sir; I think so—in Vermont, if my recollection serves me.

Mr. COLSTON: I think that is all I want to ask.

The CHAIRMAN: Anything further Mr. Warrington?

Mr. WARRINGTON: I forgot one question which I will ask your indulgence on. What is the difference between the rates charged under the old and the new classification, both as to carloads and less than carloads, by percentage, if you know.

Mr. MACDONALD: 17½ per cent., on less than carloads and 20 per cent. on carloads.

Mr. MAXWELL: Between what points?

Mr. MACDONALD: An average of our business.

Mr. WARRINGTON: Now, is there any way to ascertain what that difference is, by multiplying those percentages by anything else connected with your business; if so, how?

867 Mr. MACDONALD: We can show the percentage increase to any point; for instance, to Chicago it is the advance from 12 to 15 cents, which is 25 per cent.

Mr. WARRINGTON: Well, I want to know what use we can make of the 20 per cent. and 17½ per cent. in this connection by applying it to your business.

The CHAIRMAN: Is that anything more than an estimate on your part, Mr. Macdonald?

Mr. MACDONALD: It was taken off our books. We took off several months' business and made an average of what the business was.

The CHAIRMAN: That is a deduction that could be made from these statements you have already put in evidence.

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: If you take these statements offered in evidence just how would you ascertain this percentage or apply it to anything? It is clear to you, but I want you to make it clear to others.

Mr. MACDONALD: It would be represented in the totals by the percentage increase.

Mr. WARRINGTON: Suppose you take a box of soap and want to ascertain the additional cost, how would you do it by the use of these percentages either as to carloads or less than carloads?

868 Mr. MACDONALD: You could figure on the basis of 15 cents per hundred on an 80 pound box. The cost of getting a box of soap to Chicago was 12 cents a box.

Mr. WARRINGTON: Was when?

Mr. MACDONALD: That is the new rate. I got ahead of myself. The old rate was 12 cents a hundred. At 80 pounds, that would be 9.6 cents. Under the new classification it is 15 cents a hundred, 5th class; 80 pounds would be 12 cents, which we represent in a percentage of 25 per cent. The rate has advanced from 12 to 15 cents or 25 per cent.; but on our average business in carloads it is not as much as that.

Mr. WARRINGTON: Well, would it do to add 20 per cent.? Would it be accurate to add 20 per cent. for the average?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: That would be as to carloads.

Mr. MACDONALD: As to carloads.

Mr. WARRINGTON: And the same thing would be true as to less than carloads?

Mr. MACDONALD: 17½ per cent.

Mr. WARRINGTON: I wish to ask you whether or not commodity rates for soap, raw material, sent to Chicago are concealed or

869 open?

Mr. MACDONALD: They are open and published in the tariffs and can be used by all shippers between those points.

Mr. WARRINGTON: Who publishes those tariff rates?

Mr. MACDONALD: The carriers operating between those points.

Mr. WARRINGTON: Then, is there any difficulty in ascertaining what the commodity rates are and what they have been on those raw materials as to any of the cities?

Mr. MACDONALD: Not the slightest. It could be done by an examination of the tariffs.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: Now, I would like to have from you the figures you say you have taken from your books that produce 17½ per cent.

Mr. MACDONALD: I have not them here.

Mr. COLSTON: You have not them?

Mr. MACDONALD: No, I have not. I do not think they are in existence. I think we destroyed them.

Mr. MAXWELL: I would like to have the figures from your books by which you produce 20 per cent.?

Mr. MACDONALD: I have not them. Those were the figures. We destroyed our record of how we computed the calculation.

Mr. MAXWELL: You did not destroy your books, did you?

870 Mr. MACDONALD: No, I think we retained them.

Mr. MAXWELL: That is all.

The CHAIRMAN: The prices at which you sell your soaps do not include the freight rates, do they?

Mr. MACDONALD: Yes sir; we sell our soap delivered.

The CHAIRMAN: Then these prices which you establish for different zones include the transportation charges from Cincinnati to those points of destination?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: Then, it is to be understood in connection with your testimony that all these prices you have mentioned are the prices of your goods delivered?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: And includes the freight rate?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: We might understand that whenever you have mentioned prices of your goods either actual or relative, you have intended to include the freight rate as part of that price?

Mr. MACDONALD: Yes sir; all our prices are delivered. We prepay the freight on all our soap shipments.

The CHAIRMAN: I did not know but that you meant by prepaying the freight, you do in fact prepay it and add it to your ac-

871 count?

Mr. MACDONALD: No sir; it is in the price.

The CHAIRMAN: Are there other manufacturers of soap in Cincinnati?

Mr. MACDONALD: Cincinnati is a large soap manufacturing point. There are a number of good sized manufacturers there.

The CHAIRMAN: Making soaps competitive with your-?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: Name the largest or one of the largest soap makers in New York or that vicinity?

Mr. MACDONALD: Colegate & Co. and P. T. Babbitt.
The CHAIRMAN: Do they make soap similar to yours?
Mr. MACDONALD: Yes sir.
The CHAIRMAN: Competitive soaps?
Mr. MACDONALD: Yes sir.
The CHAIRMAN: Are their soaps sold in Cincinnati?
Mr. MACDONALD: Yes sir.
The CHAIRMAN: And yours are sold in New York?
Mr. MACDONALD: Yes sir.
The CHAIRMAN: The same kind?
Mr. MACDONALD: Yes sir.
The CHAIRMAN: And at about the same price to the retailer?
Mr. MACDONALD: Yes sir.
872 The CHAIRMAN: That is all.

Com'r CLEMENTS: It occurs to me that there must be some confusion between what you say now and what you said yesterday. You said that wherever you spoke of prices here, it is the price including freight. Yesterday you testified to the different grades of soap, Ivory $6.55, perhaps, Lenox, $2.70 or something like that. Now, what you say today indicates that those prices would be varied according to the zone into which they were to be shipped. In order that there may be no misunderstanding about this, what did you mean when you spoke of one price yesterday for Ivory soap and another for Lenox without making a distinction as to where it is to go?

Mr. MACDONALD: What I meant to give was that the prices given are the prices for zone No. 1; that is, for Cincinnati and places surrounding Cincinnati. It would be 10 cents more in number 3, which would be the east. That means that the price instead of being $2.70 would — $2.80. If in zone No. 5 there is a greater advance. It is added to that price. The price is always delivered.

Com'r CLEMENTS: You say that when you ship west of the Mississippi river you take a large number of orders, group them together and put the consignments into a car, making a carload?

873 Mr. MACDONALD: Yes sir.

Com'r CLEMENTS: And each box is addressed to the consignee at the respective point of delivery, and when it reaches the Mississippi river it is taken out and distributed. It goes that far at the carload rate and from there on at the less than carload rate. Does the tariff provide for that—for that kind of shipment?

Mr. MACDONALD: Yes, sir.

Com'r CLEMENTS: It allows you to do that just as it allows the meat man to mix his meats and soap and make up a carload.

Mr. MACDONALD: Yes sir; except in his case there are two commodities and in ours only one.

Com'r CLEMENTS: There may be as many consignments as you please to make up a carload?

Mr. MACDONALD: Yes sir.

Com'r CLEMENTS: Respecting these increases of mileage of that Ivorydale & Mill Creek Valley Railroad, it appears that it is one mile more in one year than another. Has that been increased in mileage

from the time of the organization every year, or only in one year? Have there been several increases of mileage?

Mr. MACDONALD: It has been gradual, Mr. Commissioner.

874 We do not intend to have the conclusion drawn that we have measured this with a line each year. I suppose that to begin we had a couple of miles of track, and it has grown until we now estimate it roughly at 7 miles.

Com'r CLEMENTS: The old firm had?

Mr. MACDONALD: Yes sir.

Com'r CLEMENTS: But there were more than 2 miles when it was organized into a railroad company?

Mr. MACDONALD: Well, I do not know about that.

Com'r CLEMENTS: Who has built this increased mileage—the railway company or the soap manufacturing company?

Mr. MACDONALD: The soap manufacturing company.

Com'r CLEMENTS: That is all.

Mr. COLSTON: You were going to bring us a diagram showing that soap factory. I would like to see it if you have it.

Mr. MACDONALD: I started to do that this morning, but not having the figures I could not give the distances on the scale and I thought it would be inaccurate.

Mr. MAXWELL: Have you a bird's eye view of Ivorydale?

Mr. MACDONALD: We would be very glad to get one and have it in this case.

Mr. COLSTON: Does that show the railroad, that bird's eye view?

875 Mr. MACDONALD: I think it would.

Mr. COLSTON: You mean that it is some sort of picture for advertising purposes?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: This railroad is a kind of zig-zag shape, is it not?—Circular—or what is its shape?

Mr. MACDONALD: Switches in between buildings.

Mr. COLSTON: Well, it is just a piece of crooked main track with little spurs running off to each house?

Mr. MACDONALD: It is not crooked, but it runs in between the buildings. One runs in at one side of one building and another would run in between the next buildings.

Com'r CLEMENTS: Do you find it necessary to maintain these agencies for distribution such as you have at St. Louis, San Francisco, Portland and other points since the difference between the carload and less than carload rate has been increased, more necessary than before?

Mr. MACDONALD: It has not increased. The 20 percent difference in the third class rate practically made the difference the same as it was before.

Com'r CLEMENTS: You maintained these agencies for distribution beforehand about as you do now?

Mr. MACDONALD: Yes sir; we have been pursuing the same

876 method of shipping for a long time back.

Mr. COLSTON: Name to the Commission the biggest soap maker in Cincinnati besides Procter & Gamble?

Mr. MACDONALD: The Globe Soap Company, M. Werk Co., and there is a very large toilet manufacturer there.

Mr. COLSTON: Who is he?

Mr. MACDONALD: Andrew Jergens & Co.

Mr. COLSTON: Werk & Co. is a concern of large capital is it not?

Mr. MACDONALD: I do not know.

Mr. COLSTON: What is the reputation of it?

Mr. MATTHEWS: Well, I do not think that is relevant, if your honors please.

The CHAIRMAN: You mean the financial credit?

Mr. COLSTON: No, I mean this, here is a man living at Cincinnati and he says he does not know whether the M. Werk Co. is a responsible firm.

Mr. MACDONALD: You did not ask me if they were responsible. I think they are. I know of no facts about their business.

Mr. COLSTON: Do you know anything about the volume of business?

Mr. MACDONALD: No sir.

Mr. COLSTON: Do you know anything about the Globe?

877 Mr. MACDONALD: I know we meet their soap largely around Cincinnati.

Mr. COLSTON: They deal in laundry soap?

Mr. MACDONALD: Yes sir.

Mr. COLSTON: And the Werk Company deals in laundry soap?

Mr. MACDONALD: Yes sir.

The CHAIRMAN: That is, you find the competition of Cincinnati soap makers outside of Cincinnati?

Mr. MACDONALD: Yes.

The CHAIRMAN: Through a considerable territory?

Mr. MACDONALD: We meet them at considerable distances from Cincinnati, yes sir.

The CHAIRMAN: So they must have occasion to ship to a considerable extent both in carloads and less than carloads outside of Cincinnati?

Mr. MACDONALD: Yes sir.

Mr. COLSTON: Thomas Emery & Sons are engaged in the manufacture of soap—are they or not?

Mr. MACDONALD: No.

Mr. COLSTON: They manufacture candles very largely.

Mr. MACDONALD: Yes sir.

Mr. COLSTON: Their works are near yours, are they not?

Mr. MACDONALD: Yes sir.

878 Mr. COLSTON: Do they have a side track into their place to take in carload lots from the railroads?

Mr. MACDONALD: I think so.

Mr. COLSTON: Do you not know it?

Mr. MACDONALD: I know they have a switch in there, yes sir.

Mr. COLSTON: And that the cars in handling carload shipments are put in and out over that switch?

Mr. MACDONALD: I do not know that.

Mr. COLSTON: Do you know whether they get as much as 2 cents a hundred for the use of switch track of the railroads?

Mr. MACDONALD: I do not.

Mr. COLSTON: You do not know that they get anything.

Mr. MACDONALD: I have no knowledge whatsoever about that.

Mr. COLSTON: Do these other soap manufacturers have side tracks into their places?

Mr. MACDONALD: I do not know.

Mr. COLSTON: I refer to M. Werk & Co.

Mr. MACDONALD: I do not know.

Mr. COLSTON: I refer to the Globe Company?

Mr. MACDONALD: I do not know.

Mr. WARRINGTON: Do you know where the Werk establishment is?

879 Mr. MACDONALD: In a general way I know what part of the city it is in.

Mr. WARRINGTON: Do you know that it is within a half mile of any railroad?

Mr. MACDONALD: I do not think so.

Mr. COLSTON: How do they get their soap to the railroad for shipment—haul it in wagons?

Mr. MACDONALD: I do not know.

Mr. COLSTON: Do you know whether the railroad pays for the hauling in wagons or furnishes the wagons for the hauling there.

Mr. MACDONALD: I have no knowledge.

Mr. COLSTON: So far as you know, they have to haul it and load it at their own expense?

Mr. MACDONALD: I have no knowledge of that.

Mr. COLSTON: I asked as far as you know?

Mr. MACDONALD: I have no knowledge.

Mr. WARRINGTON: I wanted to asked this question, what has the 20 per cent. less than third class to do with the traffic west of the Mississippi river?

Mr. MACDONALD: Only so far as it affects it up to St. Louis, St. Louis representing the Mississippi River.

Mr. WARRINGTON: Well, I understand that. How has
880 your plan of doing business in the western district been affected by this classification?

Mr. MACDONALD: Not at all, except to advance our rate up to the Mississippi river.

Mr. WARRINGTON: You have said that you ship in carload lots to the Western Classification division?

Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: Then, I do not understand what you meant when you answered his honor, Com'r Clements, about the 20 per cent. less than third class, that that did something, as though that had something to do with your plan of doing business west of the Mississippi River.

Mr. MACDONALD: It had nothing to do with that.

Mr. WARRINGTON: Then, what was your object in alluding to that.

Mr. MACDONALD: It was to make it clear to Com'r Clements that, taking the official classification as a whole, in Official Classification territory, that the difference between carloads and less on soap had not been widened by the present classification, that is, since the change of 20 per cent. has been made.

Com'r CLEMENTS: The 20 per cent. reduction brought it back to you to where it was before?

881 Mr. MACDONALD: Yes sir.

Mr. WARRINGTON: That is as between the two classifications. I do not understand what the two classifications have to do with business west of the Mississippi river since you only use the carload lots?

Mr. MACDONALD: It has nothing.

Mr. WARRINGTON: That is all.

Com'r CLEMENTS: Has this change in classification and rates diminished the volume of your business month by month, or not?

Mr. MACDONALD: That is a question I could not answer. There are so many other conditions that enter into the volume of business that I could not answer that.

Mr. WARRINGTON: Has the volume of business decreased or not since January 1st?

Mr. MACDONALD: It has decreased very materially.

Mr. MAXWELL: Tell us what your tonnage since the 1st of January has been on soap or let me have the figures that show this decrease, or tell me what book they are taken from?

Mr. MACDONALD: I have not that with me. I can figure it.

Mr. MAXWELL: What are the figures? Let us have the figures.

Mr. MACDONALD: I do not know that.

Mr. MAXWELL: You do not know the figures?

882 Mr. MACDONALD: Not without looking them up.

Mr. MAXWELL: Can you not give us one of the figures?

Mr. MACDONALD: No sir.

Mr. MAXWELL: You cannot give a single figure.

Mr. MACDONALD: No sir.

Mr. MAXWELL: What book did you take them from?

Mr. MACDONALD: Our record of shipments.

Mr. MAXWELL: You keep a record of shipments?

Mr. MACDONALD: I know as a matter of general knowledge in our business that our business for the 6 months of this year has been extremely light. As to giving any definite figures, I could not.

Mr. MAXWELL: But "extremely light" is such a broad term.

The CHAIRMAN: Do you desire some comparison as between the volume of business for the last six months and the business for the corresponding months of last year or for the previous six months?

Com'r YEOMANS: About how many cars a month has it fallen off?

Mr. MACDONALD: I could not answer that.

Com'r YEOMANS: You could not tell whether it was one car off a month, or forty or a hundred?

Mr. MACDONALD: I know it is more than one.

883 Com'r YEOMANS: Will you furnish the Commission a statement of what it has been?

Mr. MACDONALD: Yes sir.

Mr. MAXWELL: I would like to have that statement show the tonnage for Ivory soap at least and Lenox soap, and then all the other soaps.

Com'r YEOMANS: Where they are shipped separately, that might be done, but where they go together it would be very hard to separate them.

Mr. MAXWELL: There will be no trouble about it.

Mr. WARRINGTON: That cannot help you one particle. You know all these dealers have ways of conducting their business and it cannot help any railroad man or any man to require us to divulge our business absolutely. If we can help you with any information, call for it and you will get.

Com'r YEOMANS: He says there has been a very large falling off.

Mr. WARRINGTON: We will give that, but Mr. Maxwell is asking something in addition to what you request be given and that is that we tell our business, as to what Lenox, what Ivory and what the others are. There will be something said about that subject, and if that is one of the penalties of trying a case, we will have to suffer it, but I do not think that will help anybody. But what you
884 asked, Mr. Commissioner will be given.

Mr. MAXWELL: We think it is exceedingly important when such a claim is made to know whether it is a falling off of high grade or low grade soap. Mr. Warrington coming here insisting that the railroads are charging him an unreasonable rate, it is necessary to know what it is costing the railroads, what profit, if any, they are making out of it.

Mr. WARRINGTON: As you ask the information now, I will give it. I thought you said to give our whole output of Ivory and then the others, but to give the falling off of the several classes, we have no objection.

Mr. MAXWELL: We want to know what it was before and we want to know the percentage of falling off.

Com'r CLEMENTS: I do not know that it is very important.

The CHAIRMAN: I understand Mr. Macdonald to disavow any claim that the falling off of business since January 1st is caused by the change of classification.

Mr. MACDONALD: I said I did not like to state.

Mr. COLSTON: Do you know of any instance where you declined to fill an order because of this increase of rate since January 1st?

Mr. MACDONALD: I do not know of such an instance.

Mr. COLSTON: You do not know of a case where they de-
885 clined to fill an order because of the increase, the advance of this rate?

Mr. MACDONALD: No sir.

Mr. MAXWELL: You have not charged a cent more to your customers since January 1st, have you—I mean not on account of this classification?

Mr. MACDONALD: We have explained very fully that it was not possible to advance our prices to absorb the increased transportation cost.

The CHAIRMAN: Let us see whether Mr. Macdonald is to be required to furnish any information in detail or with exactness which has not been produced. I understand him to say that their business has fallen off since the 1st of January. He does not know whether that is occasioned by the change of classification or whether it is attributable to other causes.

Mr. MACDONALD: Mr. Chairman, I was not willing to make the statement that it was caused by that—that was all.

The CHAIRMAN: It is a little difficult to see why that should be the cause, since it is a change of classification that affects all competitors; so presumably it is due to other causes in the main. Now, you still insist that Mr. Macdonald shall furnish a statement of the actual shipments of each kind of soap for any given period?

886 Mr. MAXWELL: If he is going to furnish a statement at all, we would like to have it show the different kinds of soap.

The CHAIRMAN: Everything ought to be produced and furnished here by the way of facts which will throw any light on any question that is involved here to aid the Commission in properly estimating the significance of other facts. It is not quite easy to see just now how a knowledge of the way their business divides up in percentages or volume as between the different kinds of soaps is very material. If you think it is Mr. Maxwell, I would be glad to have you suggest in what way.

Mr. MAXWELL: I was going to say this about it. We have no desire to pry into the affairs of this company more than is necessary to the determination of this case. Now, what is necessary for the determining of this case is for your honors to say and not for us; but perhaps this would solve the difficulty, when we come to the argument of this case—I do not want to take your honors' time now—that argument may lead your honors to conclude that certain information is really desirable and important, and if that involves a statement from these books, then your honors can direct it.

The CHAIRMAN: Yes sir; and we should not hesitate to do so. Of course, this is not entirely an issue as between Procter & Gamble and any one railroad here. It is a matter of public interest,

887 and no matter at what stage of the proceedings it becomes our duty in order to have some doubtful fact cleared up or some further fact that would affect our judgment in any respect, we ought to secure it, and the suggestion you make seems a suitable one, that when this case is argued if there appears to be a difference as to what the facts are or if it should appear that some further fact ought to be presented here to aid in the determination of the question, it should be produced. But it is undesirable, of course, to have a witness in a case like this instructed to bring in a lot of statements and figures at some later time. It ought to be avoided if it can with justice to everybody. So with that understanding perhaps we can get along better at present. If there are no further questions, Mr. Macdonald may be excused.

The witness was excused.

888 WILLIAM COOPER PROCTER, a witness on behalf of complainant, being duly sworn, testified as follows:

Mr. WARRINGTON: Where do you reside?

Mr. PROCTER: I reside at Glendale, Hamilton County, Ohio.

Mr. WARRINGTON: What is your relation to the Procter and Gamble Company?

Mr. PROCTER: I am the general manager.

Mr. WARRINGTON: How long have you been its general manager?

Mr. PROCTER: Since 1890.

Mr. WARRINGTON: Were you or not connected with the co-partnership?

Mr. PROCTER: I was. I was a partner since—I think it was the fall of 1887 or 1888—I am not sure.

Mr. WARRINGTON: What occurred with reference to the change of ownership in 1890?

Mr. PROCTER: The business was incorporated which up to that time had been a firm or co-partnership, and the entire assets of the company were sold to the Procter & Gamble Company.

889–899 Mr. COLSTON: That was in 1890?

Mr. PROCTER: In 1890.

Mr. WARRINGTON: Do you remember the date of the transfer or when it took effect?

Mr. PROCTER: I think it was either the 13th or 17th of July that it went into effect. The profits of the business started the 1st of July. The actual possession began on the 13th, I think.

Mr. WARRINGTON: Now, gentlemen, I wish to offer this (producing paper).

Mr. COLSTON: Is this an extract from the deed?

Mr. WARRINGTON: From the contract of sale.

Mr. MAXWELL: Have you not the deed?

Mr. WARRINGTON: Yes, sir; but this feature was not carried into the deed. Of course, I have not the original contract here, but this is an extract from it. We wish to offer the following extract from the contract or agreement made between the Procter & Gamble Company, a co-partnership, and the Procter & Gamble Company, a corporation, dated July 24, 1890, which by a stipulation therein was to take effect as of July 1st, 1890, to wit:—

The CHAIRMAN: That is the instrument by which the
900 partnership property was transferred to the corporation.

Mr. MAXWELL: Not quite that. It is the executory contract providing for the transfer.

Mr. WARRINGTON: Yes, sir; providing for the transfer, but I claim that it operated to transfer in connection with what I am going to prove. All I want to say to your honors, without taking time to read it all is to say that this provides for the sale of:

(Reading from contract:)

"All contracts, orders, stock in trade, machinery, plant, materials, letters-patent, patent rights, trade-marks, copyrights, labels, licenses, signs, privileges and monopolies, and also the exclusive use of the name of Procter & Gamble, and all books of account, claims, debts (except those specified in Schedule C hereto attached) fire insurance

policies, rights of action, stocks in other corporations, money and securities for money (except those specified in Schedule C hereto attached), owned by or to which the said co-partnership is entitled, or held for the benefit of said co-partnership by any person or persons, as the same existed on the first day of July, 1890, and also
901 all additional property acquired by said co-partnership, and all accretions and profits in connection or arising out of said business between the first day of July, 1890, and the date of the consummation of said sale, and also including in said sale, assignment, transfer and delivery all property of every kind and description out of which the said co-partnership has directly or indirectly earned the profits hereinbefore designated, or any part thereof, with the exceptions hereinbefore specified. All of the said property, business and good-will to be conveyed, sold, assigned, transferred and delivered to said company free and clear of all indebtedness or lien, charge or incumbrance of any kind or description by suitable warranty deeds, bills of sale and other such instruments as may be necessary or advisable for that purpose."

"The vendors shall execute and do, or cause to be executed and done all such instruments and things as may be necessary for the purpose of giving to and vesting in said company a good and valid title to the said premises, property and the business carried on in connection therewith and the good will thereof, free and clear from indebtedness, lien, charge or incumbrance."

902 I would like to just tear this off and let it go in as an exhibit.

Mr. MATTHEWS: It would be just as well to let it be copied in the record, as you read it, would it not?

Mr. WARRINGTON: Yes, sir.

Mr. MAXWELL: It is understood that counsel for the complainant is to submit the entire deed and also the transfer to us so that if in our opinion there is anything affecting that clause, it may be put into the record.

Mr. WARRINGTON: That is agreed to. Mr. Procter, was there or not any bill of sale or instrument of transfer actually executed and delivered except a deed conveying the real estate and the like?

Mr. PROCTER: No.

Mr. WARRINGTON: Now, was this contract, an extract from which has just been given, executed and delivered as of its date upon its date?

Mr. PROCTER: My recollection is that it was.

Mr. WARRINGTON: Who has had possession of that contract ever since?

Mr. PROCTER: The treasurer of the Procter & Gamble Company.

903 Mr. WARRINGTON: That is, the corporation?

Mr. PROCTER: The corporation.

Mr. WARRINGTON: State whether or not the Procter & Gamble corporation went into possession of all of the property and of all the things described in that contract?

Mr. PROCTER: It did.

Mr. WARRINGTON: Has it or not been in possession thereof since that time?

Mr. PROCTER: It has.

Mr. WARRINGTON: When was that possession given by the co-partnership to the corporation?

Mr. PROCTER: It was given on the date called for there, July 13, I think it was.

Mr. WARRINGTON: I notice that the instrument seems to be dated July 24, I do not know how you get July 13th.

Mr. PROCTER: That was my recollection. July 13th was the date in my mind that Procter & Gamble took possession. It was ten years ago and I may be mistaken.

Mr. WARRINGTON: Who paid the expense of the suit and order before the Interstate Commerce Commission July 17, 1890, and which was made to take effect in January, 1891, so far as
904 expenses were incurred therein after this possession was taken by the corporation?

Mr. PROCTER: The Procter & Gamble Company.

Mr. MAXWELL: We claim this is irrelevant.

The CHAIRMAN: We will take it for what it is worth.

Mr. WARRINGTON: What company, the corporation or the partnership, took the benefits, so far as benefits were derived, under the order so referred to—the order of the Interstate Commerce Commission.

Mr. BAYLESS: To that we object, as being incompetent, irrelevant and immaterial.

The CHAIRMAN: Is it important for you to get the fact on the record in that way? This corporation succeeded to the partnership at this time in July. Now, when the rates were changed, of course, they got the benefit of them.

Mr. WARRINGTON: Very well. Mr. Procter, what are the competitive soaps, if there be any, of your company?

Mr. PROCTER: All soaps excepting the Ivory brand.

Mr. WARRINGTON: What is the character, in a general way, of the competitive soaps—I mean their quality—what materials?

Mr. PROCTER: The competitive soaps or all the grades of laundry soap we make, with the exception of Ivory, the ordinary
905 competitive laundry soap is made of tallow, cotton-seed oil and rosin and is what is termed a pitch soap and is afterwards crushed with sal-soda and silicate. The grades of laundry soap vary according to the proportion which they use of more expensive raw material and to the extent to which they put in what are technically termed "fillers;" that means a product put in there mainly to cheapen the soap. Those soaps, are the same grade as competitive laundry soap and one brand will approach to another in quality very nearly. They are made of approximately the same stuff, made by practically the same process and they approach one another in quality and appearance very closely. It used to be some years ago that on that grade of soap, brands would figure, but as competition became fiercer and fiercer, I think the effect of destroying brands came largely from the retail trade awaking to the fact that they could supplant one brand with another, and if they found

they had a little advantage, they would supplant it, and it resulted in the destruction of competitive laundry brands to a considerable extent, so that now on competitive laundry soaps, one brand will sell against another within five cents a box—I am assuming of
906 the same general quality—the ordinary standard laundry soap of a 12 ounce cake, which at the present price is about three for a dime. The next is a 10 ounce cake, which retails at two for a nickel. If you run it down to the very lowest brand it will be one cent a cake. All grades of soap which retail at the competitive 12 ounce laundry are approximately of the same character. The result is practically that the only thing to determine is the question of price. Those are what we mean by competitive brands of soap.

Mr. COLSTON: You say the variation consists in the proportion in which these ingredients are used?

Mr. PROCTER: Very largely, yes sir. Of course the effect of putting in the silicate and sal-soda, which are practically a solution of soda-ash or alkali and water is to increase the proportion of water, which is the fact.

Mr. WARRINGTON: To what extent is that class or are those classes of soaps manufactured and dealt in throughout the country. I do not mean now to ask for accurate data, but generally.

Mr. PROCTER: To a very large extent, I think it is estimated that the soap business is approximately thirty-five to forty
907 million dollars a year. Those are accepted among soap men. Those are the figures given among soap men.

Mr. COLSTON: That is for all the United States.

Mr. PROCTER: All the United States.

Mr. COLSTON: Of all kinds of soap?

Mr. PROCTER: Of all laundry soap.

Mr. WARRINGTON: Now, Mr. Procter, tell us whether you make another soap, and describe it.

Mr. PROCTER: We do make another grade of soap, which is known as the Ivory soap. We have made Ivory soap about 22 years, I think. We first made the same quality of soap about two years previous to that and called it "white soap." We started out to make it an ordinary high grade laundry soap.

Mr. MAXWELL: Were you in the factory then?

Mr. PROCTER: I know the dates of these things. I know the date of the registration of "Ivory."

Mr. MAXWELL: Have you personal knowledge?

Mr. PROCTER: Personal yes sir. I remember perfectly the first piece of white soap. We discovered that this white soap had some remarkable peculiarities, which have developed so far really as
908 to make it an article outside of the ordinary lines of soap and has made it easy for us to put it in the line of specialties. We first of all found out that it had the effect of saving and not injuring fabrics and our first efforts were developed along in the line of laundry work. From time to time we got expressions from persons unsolicited, telling us the remarkable circumstances about it. That led us to make experiments and to have the soap analyzed. I do not want to go into too much detail, but what we have always

supposed was the reason that Ivory soap has these exceptional merits was because we happened to strike a lucky combination of ingredients, and secondly, we have found out that the principal reason was because I think it is conceded by those chemists who have analyzed it that it is the most perfect soap, chemically, ever known. It has a remarkable effect. We one time took up the questino—it was advised by a surgeon—of the antiseptic qualities of it. We sent it to a bacteriologist who tried the effect of a solution of the Ivory soap upon different disease germs—typhoid fever, smallpox, tuberculosis, and a number of other disease germs, I have forgotten them all—and he found that one per cent. solution of Ivory soap was more favorable against any disease germ he could develop than bi-chloride of mercury, ordinarily used. He found that it was better
909–999 for the immersion of surgical instruments as an antiseptic. We got them to try other soaps. We found that no other soap approached it. But we did find that in proportion as you approached an absolutely pure soap and a soap in which the chemical combination was more nearly perfect, that the effectiveness of soap as an antiseptic increased in geometrical progression. There is an illustration why Ivory soap has turned out to be so popular for toilet purposes. Why, it really is a cosmetic. It is a germ destroyer, has cleansing properties, and that is the reason a demand has sprung up for it as a toilet soap. It was made by the laundry soap process and it was made also for laundry soap purposes, and the use for the toilet is a use inherent in the article itself, and to some extent peculiar to it. Those are the facts about Ivory. Now, when we discovered that fact, that we did have a good thing, we started in to begin advertising. We spent enormous sums of money advertising Ivory soap. Our advertising expense on Ivory soap in the last 22 years is in excess of five million dollars. That being the case, we have created a demand and a good sale and have educated the
1000 consumer. We have been keeping the quality carefully the same so that people will have that soap irrespective of what other white soaps are offered and irrespective of price. It has prompted competition, and we have thought the thing out again and again. If there has been one white soap intended to go against Ivory, there have been fifty. They would have a little trade and then dry up. Our trade upon Ivory, we think, has been absolutely increased by the competition against it because it gives Ivory an opportunity to show its superiority. Well there is the fact. That is why Ivory is not a competitive soap. It has cost us five million dollars to get it out of that category.

Mr. COLSTON: I want you to repeat what you said about it being a cosmetic.

Mr. PROCTER: I said that was a fact. I say that is the reason it has been so successful for toilet purposes because of the peculiar antiseptic qualities it has.

Mr. WARRINGTON: Now, Mr. Procter, what, if any other business has your company been engaged in and is it now engaged in?

Mr. PROCTER: We have been engaged in the candle business,

and in the glycerine business and also incidentally with that
1001 in making certain grades of oil, which are practically portions of the candle business.

Mr. WARRINGTON: What, if any, separation is there between your glycerine and soap business, and for the present I will speak of the soap business as an entirety; on, to put it in other language, is there any connection between the two.

Mr. COLSTON: Well, I think that is a little leading, Mr. Warrington.

Mr. PROCTER: For practical purposes, there is no connection between the soap and glycerine business. We buy outside certainly more than half the glycerine we produce. What we recover from the soap factory is bought by the glycerine plant at the market price and the soap factory is credited in full for that.

Mr. WARRINGTON: What do you mean by recovering glycerine from the soap product. Describe that?

Mr. PROCTER: Glycerine is a by-product in the manufacture of soap. All animal and vegetable fats are a combination of fatty acid and glycerine. Soap is a combination of fatty acid and alkali, and in the combination of the fatty acid with the alkali, the glycerine is released and washed out with water from the soap, result-
1002 ing from the saponification of the soap by the alkali.

Mr. WARRINGTON: Now, when you say that the glycerine which is recovered from your soap manufacture is paid for at the market price, do you mean that that the soap gets the entire credit of that payment?

Mr. PROCTER: Entirely.

Mr. WARRINGTON: After that is done, what, if any further connection, is there between the soap and glycerine departments?

Mr. PROCTER: None.

Mr. WARRINGTON: Now, as to the candle business, what relation, if any, is there between that and the soap manufactory?

Mr. PROCTER: There is no more connection than with the glycerine business and just about the same—that is to say, the candle manufacture produces a red oil, a portion of which we sell to the soap factory, and after that the candle business stands entirely upon its own bottom and its profits are in by themselves. Our sale of red oil to the soap factory is made at a price below the market. I can illustrate that by telling you that we are today charging the soap factory 2¾ cents a pound when we sold 2400
1003 barrels within the past week at 4 cents f. o. b. Ivorydale.

Now, our reason for doing that is this: We find that we can sell a certain amount of our red oil at a profit, at a certain price; we will say 4 cents, for the sake of argument. If we try to sell it all we will break the market and we had better sell it at 2¾ in that form and realize more profit upon the other form. We are pushed to that also by the fact that in the competition of soap—I think it is a human weakness that you try to protect yourself where you have most at stake. We were crowded hard on red oil soaps and I think that had a weight to prompt us to make a price as favorable as possible to the soap factory for the of red oil.

Mr. COLSTON: That is, your soap factory?

Mr. PROCTER: Yes sir; we do not sell to outsiders.

Mr. WARRINGTON: Mr. Procter, in which department of your business is garbage grease used?

Mr. PROCTER: In the candle factory.

Mr. WARRINGTON: Is any portion of it used in the soap department?

Mr. PROCTER: No.

Mr. WARRINGTON: In this connection I wish to ask incidentally what garbage grease is and what it is worth?

1004 Mr. PROCTER: Garbage grease is the grease extracted from garbage and scrapings of the city, the slop-pails, and meats thrown out from hotels to scavengers. The process used to be extraction by nap-tha. I think that used to be the process of recovering. Now the process, I believe, is heating it with water and subjecting it to hydraulic process. The garbage grease is a grease—well it is not as black as your hat, but it is not far from it, and in this temperature it is semi-liquid. In the manufacture of candles it has to be all distilled, and the distilled product is as white as paper. The garbage grease is vaporized as water is in steam, and you have a pure steam from your distillation. Garbage grease, when they first started in these plants, they started at a time when prices were depressed—I think five years ago. I think four years ago we had a contract at Philadelphia for garbage grease of $1.85 per hundred pounds. The same sold last April at 4⅜ cents, and they declined to sell more at the same price.

Mr. WARRINGTON: Now, in what condition is that? What is it when you get it? Has it gone through the process where it appears as the dark grease?

1005 Mr. PROCTER: We get it as the dark grease. We do not get it as the garbage.

Mr. WARRINGTON: Recurring to competitive soaps and placing them on the market, what, if anything, have you done, and when was it done, in fixing zones and otherwise establishing a plan for the distributing and selling of that class of soaps?

Mr. PROCTER: The policy of the Procter & Gamble Company in its sales was established when I came with them in 1883. We sell exclusively to the wholesale grocery trade. When I say that, there may be exceptions, but certainly ninety-nine and a half per cent. go to the wholesale trade and that has been our policy, as I say, since I have been with them. The policy has been also of selling in a territory where freight rates are not excessive, which we will call No. 1 territory, at our minumum price; then, as the rates of freight advance, we advance; with each five cents advance of freight, we advance five cents. That, of course, is approximate and on the average. There may be an occasional point that that will not hold true, but in the great bulk of instances, that is the policy of the company. That scale has been in effect, as I say, since I have been in the business, for 17 years.

1006 Mr. WARRINGTON: How many zones or territories are there of this character?

Mr. PROCTER: I think it runs up to 12 or 13, but in the higher zones we do practically no business, or very little.

Mr. COLSTON: Are the zones numbered up to 13?

Mr. PROCTER: I think they run as high as that. I know they do to 12.

Mr. COLSTON: Have you a chart at the office with these zones marked on it?

Mr. PROCTER: No, we have not. We have simply a list price.

Mr. WARRINGTON: Can you briefly define what I will call No. 1—the basic zone.

Mr. PROCTER: No. 1 takes in Ohio, Indiana, Illinois, Southern Michigan, West Virginia, Western Pennsylvania on a line running, I think, to Altoona and up to Erie Pennslyvania, and a considerable portion of Kentucky. Then, it takes in the city of St. Louis. I think St. Louis also is a No. 1 point. There may be an occasional "2" point through that territory, but if there is, it is very small.

Mr. WARRINGTON: Can you in the same general way tell us what No. 2 is?

1007 Mr. PROCTER: No, I could not on No. 2. If you allow for a few points here and there for No. 2 in No. 1 and probably a few No. 2 points in No. 3 territory, the average will come up better and make it plainer to the Commission where the lines run; or you will have to zigzag it.——

Mr. WARRINGTON: I do not want you to zig-zag it.

Mr. PROCTER: If I may put it this way, No. 2 points would be occasionally in the outlying territory of this No. 1 territory. Then, No. 3 territory would practically include Wisconsin, Northern Michigan, some portions of Minnesota, Iowa, Missouri, Tennessee, New England, New York State, Pennsylvania, Maryland, New Jersey and Delaware. That principally would be No. 3 territory. I am skipping one number. I skip No. 2. In that eastern territory—by that I mean all of New England, New York, Pennsylvania, Eastern Pennsylvania, New Jersey, Delaware, Maryland,—we put that on a list with an average basis. That is all No. 3 territory, and that has been in effect, I do not know how long; certainly I do not remember when it was different—I do not remember its ever being different.

1008 Mr. WARRINGTON: Well, now, without following this further for it is only to give the court an idea—what have you to say of the prices of the various soaps you sell in each of these zones or territories? I do not now ask what they are, but what as to uniformity?

Mr. PROCTER: They are uniform through each respective zone and five cents advance for each higher numbered zone; No. 2 is five cents and No. 3 is ten cents above No. 1.

Mr. COLSTON: The base price is the same—the basis price is the same all through?

Mr. PROCTER: Yes sir; No. 1 we call a basis, and we advance as the freight advances.

Mr. WARRINGTON: Now, what have you found, if anything,

to be the effect of competition to increase the cost of selling in these zones?

Mr. PROCTER: First of all I think I might illustrate it by saying that in No. 1 territory, with a population, I think, of sixteen millions against twenty-seven millions, our sales of competitive brands of soap are—well we figure it out that where we sell to twenty-seven millions of people 1728 boxes—I have used a par figure—among sixteen millions we sell 1600 boxes. The ratio
1009 would be where we sell 100 boxes in one territory we sell 64 in another, to put it in another way. Where we sell 100 boxes in No. 1 territory——

Mr. MAXWELL: Is that twenty-seven millions?

Mr. PROCTER: I think so. That is from recollection. These other figures are not.

The CHAIRMAN: We do not understand you as stating the sales in proportion to the number of inhabitants.

Mr. PROCTER: Well, that is what I did, but what I had in mind, Mr. Commissioner, was the proportion. I was trying to figure back on the proportion of soap we sell per hundred inhabitants, and it is as I stated in that territory.

Mr. WARRINGTON: Within what territory is that proportion.

Mr. PROCTER: That No. 1 territory—Ohio, Indiana, Illinois, Southern Michigan, Western Pennsylvania, and a part of Kentucky.

Mr. WARRINGTON: Now, compare that with No. 3?

Mr. PROCTER: In No. 3 we sell—taking No. 1 territory as par—on 10 cents advance in freight, we sell 64 per cent. per capita.

The CHAIRMAN: Not 64 per cent. of your sales?

1010 Mr. PROCTER: No sir; 64 per cent. per capita of what we sell in No. 1. In No. 5, we sell 41 per cent.

Mr. WARRINGTON: And No. 7?

Mr. PROCTER: In No. 7 I think we sell 18 per cent.

Mr. WARRINGTON: Now, can you give us the cost of selling, approximately or otherwise, or by percentages—that is, of selling the soaps in these territories?

Mr. PROCTER: Taking No. 1 territory as par or 100, the cost per box of selling soap—and by selling I mean all traveling salesmen's expenses, both salary and traveling expenses applying in that territory—on competitive brands of soap we do little or no advertising; they will not stand it—taking the selling expense in No. 1 territory as 100, in No. 3 territory it is 170; in No. 5 territory it is 212; in No. 7 territory it is over 400 per cent. In No. 7 territory we have lost money every year we have been in it.

Mr. WARRINGTON: Now, what effect has that had toward absorbing the advance you have made as between territories in the prices of your soap?

Mr. PROCTER: So far as advances being a source of profit to us, they, of course, are absorbed and more.

1011 Mr. WARRINGTON: What effect has that now on the question of freight rates? Is there anything left of them? You have spoken of this gradation or this raising of prices as freights increase?

Mr. PROCTER: Well I think it amounts to a demonstration if I may go a little into detail to a little more than answer the question.

Mr. WARRINGTON: I wish you would explain fully.

Mr. PROCTER: We find that when we take No. 1 territory and fix the price as low as our average competitor can go around us on a similar grade, on a certain amount of money spent in selling soap, we can sell 100. Now, we find when we go to No. 3, where the advance is 10 cents a box and we advance that 10 cents, of course at the 10 cents advance over competitors we will not sell as much soap. We have tried both plans. We tried three years ago making the same price. We had the same price in 27 states. The result was our trade began sliding away. We took the other back and we found that when we advance 10 cents on freight we have to spend that 10 cents and more to sell 64 per cent. as much as where the freight is low. If you advance that 10 cents more, we have to spend
1012 that 10 cents advance and more in order to sell 41 per cent.; and you get out into other territory and you are not in it. We do not swap dollars when we get out into distant points where competition exists. No. 7 Territory is made up so far as we are concerned, in Texas. This year we took some of our men out of Texas and dropped our price to compensate. We sold in six months last year 12,000 boxes and in the corresponding six months this year 5,500 boxes.

Mr. WARRINGTON: Now, Mr. Procter, in view of what you have stated, why do you attempt to do business in those remote territories.

Mr. PROCTER: I think it is generally known that a volume of business is an absolute necessity. A large concern simply cannot exist without a volume of business.

Mr. COLSTON: That is an explanation the railroads have always tried to make.

Mr. PROCTER: That is true. When we have been selling out in that territory that portion of the business does help as a whole to decrease our expense of manufacture. There are certain fixed charges they do help to bear. There is a certain amount of office expense and interest charges which they do help to bear. As far as No. 5 is concerned, I do not think we lose any money in No. 5, but I
1013 do not think we make any money in No. 5. We make a little money in No. 3. Then, there is another fact; a large concern cannot simply sit still and leave any territory for another competitor to grow up in. He has got to keep that man busy at home or he will be busy around his own house. You have to do that in self defence and do business all over the country. You have to keep pushing it or your business will dry up. A man in business who is not aggressive will not be in business long.

The CHAIRMAN: Mr. Warrington, have you nearly concluded your direct examination of Mr. Procter, or will it continue for some time?

Mr. WARRINGTON: Well, it will take some time. I do not believe it will be very long, but I do not think we can get through this evening unless you are going to sit later than usual. It is now five o'clock.

The CHAIRMAN: Then, we will adjourn until ten o'clock tomorrow morning.

At 5 o'clock p. m. the Commission adjourned until 10 o'clock a. m. June 23, 1900.

1014 Fourth Day.

WASHINGTON, D. C., *June* 23, 1900, 10 a. m.

The CHAIRMAN: Proceed, Mr. Warrington.

Mr WARRINGTON: Mr. Procter, will you please take the stand.

Mr. PROCTER resumed the stand.

Mr. WARRINGTON: Mr. Procter, what, if any, samples of competitive soaps are you accustomed to see and analyze, or have you analyzed, not alone from zone No. 1, but other zones, the territory in which your company does business?

Mr. PROCTER: It is our custom to have samples of all competitive brands of soap sent to us, averaging at least four samples a year from all of our principal competitors; less frequently the less important ones. Those samples we have tested and analyzed and records kept for the purpose of keeping check upon our competitors and of knowing what they do as to changes of the quality of their soap and knowing what we have to compete with.

Mr. WARRINGTON: Does that enable you, or not, to make
1015 comparisons as to the competition existing in one territory with the competition of another?

Mr. PROCTER: As regards the quality of soap?

Mr. WARRINGTON: Quality and numbers. Does that add to what you stated yesterday in any way?

Mr. PROCTER: Yes, it informs us upon the factor of relative qualities, and it of course keeps us in touch with a large proportion of the more important soap makers.

Mr. WARRINGTON: Suppose you take zone No. 1 and zone No. 3 for illustration. What is the comparison as to competition in those two zones?

Mr. PROCTER: I think the competition is less severe than in zone No. 1 in all the eastern section of No. 3 Zone, and about the same in the western section.

The CHAIRMAN: Less in No. 1?

Mr. PROCTOR: Less in No. 3 than in No. 1, and about the same in the western section.

The CHAIRMAN: That is, less competition in Zone No. 3 than in Zone No. 1?

Mr. PROCTER: Less in No. 3 than in No. 1, and about the same competition in the western section.

Mr. CHAIRMAN: As in No. 1?

1016 Mr. PROCTER: As in No. 1. The difference is not great, but if anything the competition is not quite as severe in the East as in the West.

Mr. WARRINGTON: How do your efforts to make sales in Zone No. 1 compare with your efforts to make them in Zone No. 3?

Mr. PROCTER: Our efforts as measured by our expenses put upon it are greater in No. 3 than in No. 1. It costs us more per box to sell in No. 3 than in No. 1. In other words, I think that is a fair criterion of the effort. We work relatively more men and spend more money to get the trade.

Mr. WARRINGTON: How do your soaps which are employed in these efforts in the two zones compare in quality, or otherwise for that matter, with the competitive soaps in the two zones?

Mr. PROCTER: We think that the quality is better. It is better essentially in its uniformity. As I said yesterday, the quality of these competitive brands of soaps are approximately the same, but we claim, and believe, that the quality of our soap is a trifle better than that of our competitors.

Mr. WARRENTON: Do you not mean that as to both zones?

1017 Mr. PROCTER: Yes, sir; I mean it, practically over both zones.

Mr. WARRINGTON: What are the comparative results in a business sense as between the two zones?

Mr. PROCTER: Do you mean as regards our sales?

Mr. WARRINGTON: Yes, sir.

Mr. PROCTER: Our sales are proportionately less in No. 3 Zone as compared with No. 1, and a still greater discrepency in No. 5 as compared with No. 1.

Mr. WARRINGTON: I take it that these are but illustrations of what it is as to all the zones?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: That is, in comparison with zone No. 1, is that right?

Mr. PROCTER: Yes, sir; that is right.

Mr. WARRINGTON: Now, Mr. Procter, what is there in your judgment and according to your experience to make these differences in business results, in view of the comparisons we have stated?

Mr. PROCTER: The soap simply cannot stand the advanced rates of freight. It is narrowed down to that point.

Mr. WARRINGTON: There is one question that I wished to

1018 ask you yesterday, that occurs to me and I will allude to it now. What, if any, separation is there other than you have stated, between the glycerine department and the soap department?

Mr. PROCTER: They are absolutely physically distinct. The glycerine department has no connection with the soap department in any way; the building must be 500 to 800 feet distant, I should say.

Mr. WARRINGTON: In other words you have separate buildings for your separate departments?

Mr. PROCTER: Yes, sir.

Mr. EARRINGTON: Is what you have just stated true as to candles?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: What about stearic acid? What is that, and what do you do in that regard?

Mr. PROCTER: That is what is commonly called the tallow part of a candle, with the glycerine extracted, and is chemically a fatty fluid.

Fats are composed of stearic and oleaic acids; the glycerine is extracted and then you have a mixture of stearic and oleaic acids. The oleaic acid, or red oil, is pressed out of the fats and stearic acid is the remaining portion.

1019 Mr. COLSTON: Is that what is called stearine?

Mr. PROCTER: No; stearine is the natural fat before the glycerine has been extracted. Chemically it is a salt and stearic acid is an acid.

Mr. WARRINGTON: What as to red oil? I do not think I asked you about that?

Mr. PROCTER: Red oil is a product of the candle factory, and has no connection except as we send it from the soap factory to the candle factory, or a portion of it, as I explained yesterday.

Mr. WARRINGTON: The stearic acid is produced where?

Mr. PROCTER: In the candle factory.

Mr. WARRINGTON: And the red oil is produced where?

Mr. PROCTER: In the candle factory.

Mr. WARRINGTON: Mr. Procter, what, if anything, is common to these departments, so far as supply is concerned?

Mr. PROCTER: Do you mean physically?

Mr. WARRINGTON: Yes, sir.

Mr. PROCTER: The plants are kept practically distinct. The only possible exception would be that they draw water from the same main; but we have separate boiler plants, separate buildings and all are distinct.

1020 Mr. WARRINGTON: I wish to go now a little into the making of soap, and to that end I wish to ask one or two qualifying questions. Where did you receive your academic education?

Mr. PROCTER: At Princeton College.

Mr. WARRINGTON: Where and how did you acquire your experience, if any, that you have in the manufacture of soap?

Mr. PROCTER: I started out at the factory after I left college. I have worked in every department from firing boilers to making soap. I have made and finished every kind of soap that was made at Procter & Gamble's for over two years.

Mr. WARRINGTON: What had you to do, Mr. Procter, with the planning, superintending and construction, and the like of the present plant of the Procter & Gamble Company?

Mr. PROCTER: Prior to 1890 that work was in the hands of Mr. James M. Gamble. Since 1890 I have had charge of that business and every building that has been erected there has been under my supervision, or under my direction—perhaps that is a better word to use—to the extent that no plan for any building has gone into effect before I approved it, nor any piece of machinery bought nor contract made until I approved it.

1021 Mr. WARRINGTON: What, if anything, did you learn of the cost of material in that regard?

Mr. PROCTER: Well, I have of course a general idea of the cost of materials for building and the cost of our own particular buildings. I did know them all at the time.

Mr. WARRINGTON: What improvements have been made upon this property since the 1st of July, 1890?

Mr. PROCTER: The capacity of the plant since 1890 has certainly been trebled. It does not necessarily follow in that connection that we have invested three times the amount of money, or double the amount of money.

Mr. WARRINGTON: The increase in capacity after you reach a certain point does not cost proportionately as much as the first portion? Is that true?

Mr. PROCTER: That is true.

Mr. WARRINGTON: Are you able to state the comparison in prices between raw materials in 1890 and the early part of 1891 and of raw materials, say, since the 1st of January of this year, which are used in the manufacture of soap?

Mr. PROCTER: Yes, sir; raw materials are about the same as
1022 they were at those times. The difference, if any, is they are a little higher; but approximately they are about the same. With reference specially to fats, alkali may be a little lower, but the average of the whole would be higher.

Mr. WARRINGTON: Higher than when?

Mr. PROCTER: Higher since January than in 1890 and 1891.

Mr. WARRINGTON: What have you to say as to the competition in the soap business in 1890 and 1891 as compared with this year?

Mr. PROCTER: The competition was not as great as it is now. I think I mentioned yesterday that the value of the competitive grades of soap had been considerably affected during the last few years, which is true, and the result is that where we could command a certain premium on certain competitive brands of soap we cannot do it to-day. I might explain why that is so and how it came about. It came about through a custom of soap makers, in order to force business, to go into a certain section and say to the retail grocery trade generally, "For thirty days, every order you give for five boxes of soap you will get one extra. Of course they figured that down in the selling price and got a special price for it. The result
1023 is that the retail grocer stocked up with that soap until he had nothing else. While he might have bought our soaps on deals of that kind—his trade might have been on Kirks soap the result is that he gets a lot of our soap on hand and he works to supplant Kirk's soap with ours. He finds he could do it and did do it, and the reason for the decrease as to value of brands of competitive grades of soap is due to that fact. That is my opinion as to the way it was brought about.

Mr. COLSTON: Due to giving those prices.

Mr. PROCTER: The giving of a special price good for a time in order to induce them to load up.

Mr. COLSTON: That is the way you did?

Mr. PROCTER: That is the way they all did.

Mr. WARRINGTON: What, if any, reduction in prices of soap has taken place, say, since 1890 and 1891? In other words, what is the comparison?

Mr. PROCTER: I think the price in 1890 was $3.45 a box as against $2.70. I have not refreshed my memory on that.

Mr. COLSTON: $3.45 against what?

Mr. PROCTER: Against $2.70. Last year our price to the jobber was $2.55.

The CHAIRMAN: Would that be in Zone No. 1.

Mr. PROCTER: Yes, sir.

1024 Commissioner CLEMENTS: Is that your price now?

Mr. PROCTER: No, sir; there has been an advance. The price now is $2.70.

Mr. WARRENINGTON: What was the occasion for the recent advances?

Mr. PROCTER: The advance in raw materials.

Mr. WARRINGTON: What has been the recent advance in raw materials?

Mr. PROCTER: Of course this is a comparison with last year prices, when the prevailing price of soap were made. I think cotton seed oil advanced very nearly 100 per cent.; tallow advanced 35 or 40 per cent., and rosin advanced about the same. Soda ash, which is alkali, advanced 35 or 40 per cent. I think it is conservative to say that the advance on raw materials used in soap will average 50 per cent. over what they were about a year ago.

Mr. WARRINGTON: How does that advance compare with the advance in the price of soap?

Mr. PROCTER: Why, it is not at all commensurate. The advance in the price of soap is not at all commensurate with the advance in price of raw materials.

Mr. WARRINGTON: I think you have stated, or it is implied
1025 in your testimony, but you may state why you didn't raise the price of soap to meet the raise in raw materials?

Mr. PROCTER: We simply could not do it on account of our competitors. They did not advance and a considerable number of them were below us in price. Trade once lost to a soap maker is very hard to regain and soap makers are very loath to let their competitors get in on their trade. And therefore they will hang on as long as possible to keep from making an advance.

Mr. WARRINGTON: Then, Mr. Procter, I believe you have equally stated by implication, but I will ask you directly, whether soap is able now to take up or absorb the recent increase in freights?

Mr. PROCTER: Do you mean since the first of January?

Mr. WARRINGTON: Yes, sir.

Mr. PROCTER: No.

Mr. WARRINGTON: Mr. Procter, I wish to recur to the comparisons between 1890 and 1891—one matter I omitted. While there has been this reduction in the price upon soap products that you have described, what if any reduction in the economy of producing soap has been made, and how has it compared with the reduction in price?

Mr. PROCTER: In the manufacture of any article there are
1026 of course two principal items: First, the raw material, and the expense of manufacture—grouping in the expense of manufacture, the labor, insurance, taxes and all expenses other than raw material. A man's ability to decrease his cost of manufacture lies principally in this expense account. Now, if the percentage cost of

his raw material is large the place in which he can make any saving is correspondingly small in his expense account. Our expense account is very small. I doubt if there is any manufacturing business in which it is smaller. It is less than 10 per cent. of the selling price of the soap; that is, the labor and cost of production outside of raw material.

Mr. WARRINGTON: Now, proceed.

Mr. PROCTER: The manufacture of soap is a simple chemical process and one which is of indefinite age, and one in which no change, or practically no change has been made. The labor cost is small. The chemical action is simple—the combination of alkali and fats. They are simply run in together and boiled. In our kettle houses there are four men, and those kettle houses can turn out 2,000,000 pounds a week.

The CHAIRMAN: A week?

Mr. PROCTER: Yes, sir. You see therefore from that that
1027 the labor cost is small. Assuming that we pay these men $10 a day, for the four men, the labor cost for the actual making of the soap is infinitesimal. You cannot cut down that price much. We estimate that a kettle of soap boiling costs about $1.60 and you cannot cut that down. Your only source of saving is on the materials which go into it. So there has not been any material, or any real, reductions in the expense of manufacturing soap in the last ten years, by any machinery or method of making it at all. There has been one saving effected, which was not in full effect in 1890, and that is the recovery of glycerine, which is a byproduct in the manufacture of soap, and to that extent only are we enabled to decrease the cost.

Mr. WARRINGTON: What do you mean by the recovery of glycerine? Describe that. What is it recovered from, and what is it in the fat that it is recovered from, or the liquid which it is recovered from?

Mr. PROCTER: I think I said yesterday that all fats in their natural state are a combination of fatty acids with glycerine, and soap is a combination of fatty acids with an alkali. In other words, the alkali replaces the glycerine and the glycerine is freed. The alkali is run into the fat in liquid form and the glycerine is freed. The alkali goes to the fatty acids and the glycerine goes to water that remains from the lye. That means the glycerine is in solu-
1028 tion. The water containing the glycerine is washed out and the glycerine is recovered by evaporation, and is then given chemical treatment and distillation.

The CHAIRMAN: Do you say that the raw materials cost 90 per cent. of the total cost of manufacturing. Do you include in that estimate of 10 per cent. interest on your plant, maintenance, insurance, taxes and the like?

Mr. PROCTER: Yes, that includes the interest on the plant, insurance and taxes.

The CHAIRMAN: That is all in the 10 per cent.?

Mr. WARRINGTON: Yes, sir; as I said—I do not know the manufacturing cost of beer—I know of no business outside of the brewing

interests where the labor cost is lower than in the manufacture of soap.

Mr. WARRINGTON: What has been the saving, then, as the result of the recovery of glycerine in comparison with the decrease in prices? Which has been the greater?

Mr. PROCTER: I had not quite finished my answer to the previous question. Glycerine is only recovered from glycerine bearing fats. In tallows and grease it varies as to the amount which is in those greases according to whether the tallow may be more or less rancid. I am speaking of competitive soap. On certain grades there is no glycerine bearing fats in them. In the inferior competitive
1029 brands of soap as a whole the difference as to decrease cost owing to the recovery of glycerine enables us to sell the soap for about 3 per cent. less than before we had that process in effect. I can illustrate that and I will go further if you want more detail. Is that enough, Mr. Chairman?

The CHAIRMAN: You may state what you mean if you care to.

Mr. PROCTER: I mean that our saving per 100 pounds on competitive brands of soaps is about 12 cents. On our competitive brands of soap I think, as is in evidence, it is a trifle under 4 per cent. About 3 per cent. is what we save on it. Is that clear now?

Mr. WARRINGTON: Where you used 3 per cent. did you not mean 4?

Mr. PROCTER: I meant 3 per cent.

Mr. WARRINGTON: Before receiving the glycerine and getting the value of it in some other way—you reduced your cost of manufacture about 3 per cent. by its recovery?

Mr. PROCTER: I was wrong; it is about 4 per cent.

Mr. WARRINGTON: Is that credited to soap, that saving?

Mr. PROCTER: Every penny of it.

Mr. WARRINGTON: And that enters into what you have said in respect to soap and its economics?

1030 Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: Mr. Procter, something has been said about a certain percentage of water in soap. I wish you would explain that; indeed can it be made without it?

Mr. PROCTER: No, it is required in the very act of saponification. The soap combines with the water in a certain amount and the water in soap is simply the water of crystalization. Soap in itself will have 62½ per cent. of fatty acids, to about 30 per cent. of water, and about 7½ per cent. of alkali.

Mr. WARRINGTON: Am I right then in inferring that that is so as to all grades of soap?

Mr. PROCTER: Yes, all grades of soap in their manufacture will have that amount of water. It may be decreased as in toilet soaps by drying out or increased, as in ordinary competitive brands of soap. As I said yesterday in competitive brands of soap, in addition to making it in the kettles the soap is crutched and mixed with silicate and salsoda. They are put in in a liquid form, and containing a large proportion of water. They cannot go in in any other way, except in those liquid forms. A chemical action takes place by putting

those ingredients in. There effect is to cheapen, but it is a
1031 part of the process of manufacture. Then in addition to that it will increase the amount of water in the competitive brands of soap. Any laundry soap will have at least the amount of water that I at first stated, about 30 per cent., to 62½ per cent. of fatty acids. Toilet soap will have whatever is left after drying. Toilet soaps are dried before going on the market.

Mr. WARRINGTON: Having spoken of toilet soaps, I wish to ask you in that connection, what difference, if any, in the process that exists between the manufacture of laundry soap and toilet soap?

Mr. PROCTER: They are made in the same way in the kettle, as far as I know. I do know it. And then the process after that is that the soap is dried out in what is called a plodding machine, where it is worked up into a sort of paste. In that process it is dried out. In toilet soaps you may not find more than 10 per cent. of water. They dry out the soap and it is kneaded in this plodding machine, and in that form it is run into a machine and made into cakes, and when cold the perfumery is put into it; whereas, it is put into the soap while it is fresh and hot from the crutcher in the case of laundry soaps. Then the character of the package and the ap-
1032 pearance of the cakes is a distinctive feature, and a much more expensive feature than in the case of the laundry soap. In the matter of perfume in laundry soap—in those in which we put it—we do not put it in all—it is about 3 cents a hundred. In toilet soaps they run up to more than three dollars per hundred.

Mr. WARRINGTON: Three dollars for how much?

Mr. PROCTER: Per hundred pounds.

Mr. MATTHEWS: That is on toilet soap?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: I wish to ask you now in connection with that item of expense what is the average value of competitive soaps?

Mr. PROCTER: It was a trifle under 3 cents per hundred, on competitive soaps.

Mr. WARRINGTON: Then the perfume in toilet soap, or in some toilet soaps, alone would cost more, would be more valuable than the average laundry soap? Is that right?

Mr. PROCTER: A good deal more.

Mr. WARRINGTON: You may tell us, if you will, what have been the profits on your competitive soaps? Take the last year.

1033 Mr. PROCTER: Last year, $181,000.00.

Mr. WARRINGTON: Can you reduce that to a percentage in any way.

Mr. PROCTER: To a percentage on our sales.

Mr. WARRINGTON: Sales or capital invested, or otherwise, so we can consider the $181,000.00 in connection with this matter.

Mr. PROCTER: Between 5 and 6 per cent. on the capital invested.

Mr. WARRINGTON: You mean the capital invested in what?

Mr. PROCTER: In the competitive soap business.

Mr. WARRINGTON: Mr. Procter, what is an ordinary return, considered in a conservative sense, which a manufacturing business

should receive in view of the risks and hazards of competition, not to speak of other causes of a like character.

Mr. PROCTER: I think it is usually estimated that it ought to be 10 per cent.

Mr. COLSTON: You mean net?

Mr. PROCTER: Net. There are very few manufacturing concerns that I know of where the common stock,—with the exception of our own—where the common stock is selling much different from
1034 a ten per cent. basis. Ther- are a few, but not many. I think 10 per cent. is recognized as about right for a manufacturing business.

Mr. WARRINGTON: What is the volume or output of your competitive soaps? Take the last year.

Mr. PROCTER: Our output of competitive soaps is about 80 per cent. of the total. I mean it is very close to that. It is not 82 nor 78; in fact it is not 81, but about 80 per cent. of the total; or, out of 55,000 tons, total, that would be 44,000 tons.

Mr. WARRINGTON: Mr. Procter, I do not know whether it is possible to do so, but if you can, tell us what percentage of the whole soap business of the United States, your Company does?

Mr. PROCTER: Just short of 10 per cent. Your honors will understand that that is an estimate, but one I have arrived at after careful investigation.

Mr. WARRINGTON: You might as well tell the Commission about it now as at any time, as to the difficulty of ascertaining the volume of the soap business of the country. I just want you to tell what you know about it so that such weight may be given to it as it deserves.

1035 Mr. PROCTER: The difficulties are so evident that I hardly need mention them. There are little factories in which no records are kept. The census reports kept on it are worse than useless. I know that to be a fact. But we have estimated it ourselves in a variety of ways, taking it at different times in the past. For instance, considering the ration the Government allows on soap, we have estimated from that.

Mr. WARRINGTON: Per capita?

Mr. PROCTER: Yes, sir; we have taken the trouble to get statistics from families in different walks of life, and have estimated from that, and we arrived at the estimate that our business was about 10 per cent. of the total. Then at a meeting of soap makers about a year ago at which there were efforts made to get up a combination among the soap men, and which we refused to go into, we got figures from the soap men and found that the general estimate of the soap trade was upon the same basis that we had put it, or about a total of one thousand millions pounds. It is the concensus of opinion of the soap trade that that is about the volume of the business. We know what we make and that is about one hundred million pounds net.

1036 Mr. WARRINGTON: Referring to your Ivory profits——

Mr. COLSTON: What did you say was the volume of the soap business in the United States?

Mr. PROCTER: A little in excess of one thousand million pounds.

Mr. WARRINGTON: Your competitive soap would be about what per centage of the total business in the country?

Mr. PROCTER: Our competitive traffic?

Mr. WARRINGTON: Yes, sir.

Mr. PROCTER: About 8 per cent.

The CHAIRMAN: I do not quite understand that.

Mr. WARRINGTON: Their competitive volume would be about 8 per cent. of the whole traffic. Then Ivory would be about 2 per cent.

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: There are one or two isolated matters that I wish to ask you about. One is in respect to the California soaps. Something has been said about the difference in sizes of soaps as between the soap that is sold there and the soap that is sold here. What is the truth about that so far as you understand it?

Mr. PROCTER: The trade in California has been upon a
1037 smaller size cake of soap; owing to the expense of transportation you cannot put out an equally heavy article which will sell at as popular a price. Of course price is determined on an article like soap upon some basis that will enable the brand to sell at retail at some popular price. Now in California owing to the rate of freight, you either have to advance the price if you keep the weight of the article the same, or reduce the size of the cake to enable this popular price to rule. The 10 ounce cake was a size of cake that we thought would be good for that market, and we sent out a 10 ounce cake. It is merely a question of business policy, of what we thought we could sell to the best advantage in that market.

The CHAIRMAN: Is that a policy that is followed by other dealers?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: It is an open understanding?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: Was there any change in freight rates on soap at any time after January 1, 1891, down to the present classification.

Mr. PROCTER: There was one change. I think it was in 1895, when the classification was changed for a few weeks, perhaps
1038 15 days, but we did not pay any different rate or classification of soap since that date.

Mr. MATTHEWS: Since what date?

Mr. PROCTER: Since 1890 until this last change.

Mr. WARRINGTON: You mean the change that brought on this controversy?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: Mr. Proctor, what do you know of the net weight practice, as we have called it in this proceeding?

Mr. PROCTER: It was in effect in 1887 generally. It was an open custom with us. I mean it was in effect with Procter & Gamble, and was done openly. I always assumed that it was a matter of common knowledge.

Mr. WARRINGTON: When was the railroad known as the I. & M.

V. Ry. constructed and put in operation with respect to the net weight practice?

Mr. PROCTER: Why, the I. & M. V. Ry. is a distinct organization and dates sometime after 1890. I do not remember exactly.

Mr. WARRINGTON: Dropping the name, when was that railroad constructed and put into operation?

Mr. PROCTER: We began to build the tracks the first thing we did when we went to Ivorydale, and commenced to build
1039 there, so that we could use the tracks in building the plant.

Mr. COLSTON: Use them in construction?

Mr. PROCTER: Yes, sir; when we first started in.

Mr. MATTHEWS: That was in 1885?

Mr. PROCTER: Yes, sir. From that, as our necessities grew up we built these additional connections with the other roads, and the additional tracks. Procter & Gamble got the benefit of the net weight practice irrespective of the railroad or anything of that sort. It was made a matter, so far as I know of general custom and was open.

Mr. WARRINGTON: Now, while the net weight practice was in existence what compensation was derived by the Procter & Gamble co-partnership for terminal services upon this railroad from the railroad companies?

Mr. PROCTER: We always received compensation from the railroad company for that service. The first road to give it was the C. H. & D. That was the first road with which we made connection. They recognized it as a terminal charge and allowed us for it. As we had connections put in with other roads they allowed it as a terminal charge, and they have always done so.

Mr. WARRINGTON: What were the charges, say, during the
1040 life, or in the time, of the co-partnership, and up to the time prior to the time of the making of the contract which is offered in evidence in this case between the company and the railroad company?

Mr. PROCTER: How did they compare?

Mr. WARRINGTON: Yes, sir.

Mr. MAXWELL: Suppose he tells us what they are, and then we can see how they compare.

Mr. WARRINGTON: Considering the volume of trade, the output, and the compensation derived, how did it compare with the compensation derived under the contract? State them as nearly as you can.

The CHAIRMAN: That is, what you got originally when you located your plant there and what change, if any, has taken place in the amount allowed or received since that time.

Mr. PROCTER: I think there have been one or two changes—two or three agreements in effect from the beginning. The first agreement simply provided for a lump sum allowance per month for terminal facilities.

The CHAIRMAN: A lump sum per month?

Mr. PROCTER: Yes, sir; to be paid to us by the different roads.

After that the charge was shifted over into so much per car,
1041 so much per ton on stuff out.

Mr. WARRINGTON: Do you know what the sum was per month?

Mr. PROCTER: $400.00 from the C. H. & D.

Commissioner CLEMENTS: When did that begin? What period of time did it extend over?

Mr. PROCTER: I do not know. I know that question came up as to changing the arrangement, and it looked to me like tweedledee and tweedledum, and I didn't oppose it.

The CHAIRMAN: Then the arrangement began with the C. H. & D. paying $400.00 per month.

Mr. PROCTER: Yes, sir. Our business was not a third of what we are doing now. They did not all pay the same amount; it varied.

The CHAIRMAN: Can you state up to what time the payments were made by the month, irrespective of the number of cars or the volume of business?

Mr. PROCTER: No, I am not sure of that.

The CHAIRMAN: Was that up to, or later than the organization of the railroad company?

Mr. PROCTER: I do not think it went as far as the organization of the railroad company.

The CHAIRMAN: I mean the change from that monthly
1042 payment to a payment based on quantity.

Mr. PROCTER: Those details are not fresh in my mind. I knew the general facts at the time.

The CHAIRMAN: When you changed to a payment on the basis of quantity, was the allowance uniform from all three of these roads?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: And has it always been uniform?

Mr. PROCTER: Yes, sir; I so understand it.

The CHAIRMAN: Has the amount, or the basis of allowance changed?

Mr. PROCTER: It may have changed in one or two particulars. If so, not in recent years; not for several years.

The CHAIRMAN: Ever since the railroad company was formed, since the allowance has been based on the quantity of freight the allowance from each road has been the same, or substantially equal to the present allowance?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: There has been no material change?

Mr. PROCTER: No, sir.

Mr. WARRINGTON: Mr. Procter, has any one of these railroad companies parties to the contract ever made any complaint
1043 of the compensation?

Mr. PROCTER: No.

Mr. WARRINGTON: Has any one of them ever given you notice that it wished to, or would, terminate the existing agreement or contract?

Mr. PROCTER: No.

Commissioner CLEMENTS: Is that road a party to the through tariffs that are published from Ivorydale?

Mr. PROCTER: I really do not know, sir.

Commissioner CLEMENTS: How far back have you had knowledge of this allowance, either of so much a car or so much a month?

Mr. PROCTER: Of my own knowledge?

Commissioner CLEMENTS: Yes, sir.

Mr. PROCTER: I was trying to think of it last night, and as near as I could remember it was from the beginning; certainly from 1886.

Mr. WARRINGTON: Are you familiar with the character of service that you render upon your track to the railroad company?

Mr. PROCTER: Yes; in a general way.

Mr. WARRINGTON: I wish you would describe the tracks
1044 that you have—where they run to and how long they are, and the like.

Mr. PROCTER: They are connecting tracks from our plant with the three railroads, and with additional switches going around to our different buildings which we need to move the freight. There are about seven miles of track.

Mr. WARRINGTON: What is the length of the track leading to the C. H. & D. railway tracks from the warehouse?

Mr. PROCTER: The warehouse track is about 2,000 feet.

Mr. COLSTON: That is between the warehouse and the C. H. & D.

Mr. PROCTER: Yes; about 2,000 feet.

Mr. WARRINGTON: What is the length of the track to the B. & O. S. W.?

Mr. PROCTER: Mr. Macdonald stated it at ⅝ of a mile. I would not think it was so far; I think it is about a half a mile.

Mr. WARRINGTON: What is the length of the track to the Big Four?

Mr. PROCTER: It is a little less than to the B. & O. S. W.

Mr. WARRINGTON: Do you know of the Street Connection
1045 track in Cincinnati as it is well understood?

Mr. PROCTER: Yes.

Mr. WARRINGTON: Mr. Procter, what in your judgment is the distance from Smith Street to Butler along the line of the Street Connection track.

Mr. MAXWELL: We object to that. The reasonableness or propriety of this charge is not to be determined by taking some particular instance of another connecting track on a public highway.

The CHAIRMAN: That might be quite true, but the mere statement of how long that track is, is certainly not harmful. State if you know Mr. Procter.

Mr. PROCTER: I think it is a trifle under a mile; twelve or thirteen squares.

Mr. COLSTON: How much do you say?

Mr. PROCTER: A trifle under a mile; twelve or thirteen squares, unless I have counted it wrong.

Mr. WARRINGTON: Do you know what the charges are on tha
Connecting Track?

Mr. MAXWELL: We object to that.

The CHAIRMAN: We will take that.

Mr. PROCTER: Three dollars and a half to four dollars a ca

1046 Mr. WARRINGTON: One way?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: Now, Mr. Procter, who has charge of that—what company?

Mr. MAXWELL: Does Mr. Procter know, or is it hearsay?

Mr. WARRINGTON: Do you send cars over that track?

Mr. PROCTER: Yes.

Mr. WARRINGTON: Whom do you pay?

Mr. PROCTER: The Pennsylvania Railroad Company.

Mr. WARRINGTON: I take it that when you say the Pennsylvani Railroad it is the P. C. C. & St. L. that you mean?

Mr. PROCTER: The Panhandle—the P., C. C. & St. L.; yes, si

Mr. WARRINGTON: What now, have you to say of the reasonabl ness of the charge made and paid for the services rendered by yo company, the I. & M. V.

Mr. PROCTER: I think they are very reasonable.

Mr. WARRINGTON: Why?

Mr. PROCTER: Well, they are reasonable because the I. & M. V have access to our plant and we have to have our cars deliver to and from all three roads; that if the roads themselv

1047 attempted to do that work it would cost them a great de more money than our charges are; the roads themselv would do that work if we didn't do it for them; that is a fact.

Mr. WARRINGTON: There were one or two other questions I want to ask. In handling your business, your soap business, do y distribute through any wholesale groceriese? What are the fa in regard to that branch of your business? I would like to ha that made clearer.

Mr. PROCTER: We sell only to the wholesale grocery trade; w sell to them outright. We sell to no retail customers at all, as stated yesterday. We have these few selling agencies, as Mr. Ma donald explained in his testimony yesterday. They sell for o account only to the wholesale grocery trade. Then we have trav ing salesmen who go to the retail trade, but their work is real introductory work—drumming up business, because they do not ing but take the order and then turn the order into any jobb which the retail merchant may designate. The jobber says "I not know whether I will take that order or not;" that is, wheth he will sell that man the soap or not. If he takes the order he th sends it to us and asks us to ship to this man the soap and char it to him,—the jobber.

1048 Mr. COLSTON: Ship it to the retail man?

Mr. PROCTER: Yes, sir; and we charge the jobber, and have no connection with the retailer. Our salesmen really do not ing but the introductory work as to our soap. If the retailer wa the soap that order goes to the jobber, who can sell it or not as he

fit. If he takes the order the jobber instructs us to ship the soap. The soap is billed to the jobber, and by the jobber I mean the wholesale grocer. We have no connection whatever with the retail trade. It is a direct transaction with the jobber and it is not an agency in any form, nor is it in any sense.

Mr. WARRINGTON: How much of the business is done through the solicitations of your salesmen among the retailers in the manner you have described?

Mr. PROCTER: On our competitive brands of soap I suppose you mean?

Mr. WARRINGTON: I do.

Mr. PROCTER: Between ten and fifteen per cent.

Mr. WARRINGTON: In shipping to the wholesalers, or jobbers, do you not ship in both carloads and less than carloads?

Mr. PROCTER: We ship in both ways. The minimum shipment we make to a jobber is 25 boxes, or to a jobbing town.

1049 Mr. WARRINGTON: Mr. Procter, you say you are the general manager and have been since 1890, of the Procter & Gamble Company. Who has been the President during that time?

Mr. PROCTER: Mr. W. A. Procter.

Mr. WARRINGTON: Your father.

Mr. PROCTER: My father.

Mr. WARRINGTON: What aged man is your father?

Mr. PROCTER: 66 I think.

Mr. WARRINGTON: What attention has he given to the details of the business?

Mr. COLSTON: We object to this thing. I do not see what materiality it has in this case for these gentlemen to come here and tell us how old Mr. W. A. Procter is, or as to the attention he has given to the business. So far he is not in this case, and, with the enormous amount of detail strung out here, I think I am justified in making the objection.

The CHAIRMAN: What is your purpose in going into that Mr. Warrington?

Mr. WARRINGTON: They have taken the deposition of Mr. W. A. Procter and of course will offer it, I suppose.

Mr. COLSTON: Well, we have not.

Mr. WARRINGTON: Mr. William Cooper Procter has to go
1050 back home and if I am ever to ask these questions I shall have to ask them to-day, or give it up.

Mr. COLSTON: We will waive that part of it.

The CHAIRMAN: If you want to show any facts connected with this business by this witness that is entirely proper, even though it may vary somewhat from the statement made by his father in the deposition.

Mr. WARRINGTON: There is nothing of that kind, but Mr. W. A. Procter stated that he was not familiar with the details of the business, and I simply wanted Mr. William Cooper Procter to tell you how the business is conducted.

The CHAIRMAN: Ask him that.

Mr. WARRINGTON: How is it conducted, Mr. Procter?

Mr. PROCTER: Ever since incorporation of the business my father has taken very little active part in the business. As to matters of detail I think he knows absolutely nothing. He is responsible for a large measure of the success of the Company, because if there is any question that I am in doubt about, I lay it before him and receive the benefit of his judgment. But what information he gets about details come from me second hand, almost totally; he has no knowledge of the details of the business.

1051 Mr. WARRINGTON: Has your father drawn any salary, ever?

Mr. PROCTER: No, sir; he never has.

Mr. WARRINGTON: You may cross-examine.

The CHAIRMAN: One moment Mr. Maxwell, before you take up the cross examination. Mr. Procter, is all of the carload traffic which you receive or send out carried by one or the other of these three roads?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Are they competitors for your business to a great extent?

Mr. PROCTER: Yes, sir; they are competitive lines of course.

The CHAIRMAN: How is the business divided between them, say in shipping out the soap?

Mr. PROCTER: Do you mean do we have any allotment between the roads as to proportions of the freight?

The CHAIRMAN: Yes, sir.

Mr. PROCTER: None whatever.

The CHAIRMAN: What circumstance controls the actual division of the traffic?

Mr. PROCTER: Nothing but Mr. Macdonald's caprice, so far as I know.

The CHAIRMAN: The rates to the same destinations are the

1052 same by all the lines, are they?

Mr. PROCTER: Yes, sir; I assumed that the rates were the same.

The CHAIRMAN: The same destination can frequently be reached by more than one line?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: The allowance- *is* made for the service performed by your railway company are the same from all three lines?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: And has there at any time been any other or different allowance made by any one of those lines to your company than the allowance provided by this contract?

Mr. PROCTER: None other to my knowledge, except what I told you about the allowance of $400.00 per month.

The CHAIRMAN: Since the allowance was placed upon a tonnage basis, the carload basis, there has been no difference paid by one company from that of another?

Mr. PROCTER: No, not to my knowledge, and I believe I would have known of it if it had been done.

The CHAIRMAN: And there has been no use made of that allowance to secure traffic for one road as against another?

1053 Mr. PROCTER: None whatever.

The CHAIRMAN: You stated broadly, and Mr. Macdonald, that these competitive soaps could not stand this increased charge coming from the change in classification. Are you willing to illustrate why you make that statement?

Mr. PROCTER: Well, I will have to repeat myself a little. Assuming that our sales in No. 1 Territory are 100, and our selling expenses are 100, in No. 3 Territory with an advance of 10 cents a box our sales are 64 and our selling expenses $1.70. Just take the two territories to illustrate. The competition is practically the same in each territory. Our soap is the same and the character of the population is approximately the same. We find that we cannot absorb the advance in freight and sell at a lower price, because we would not have enough money to spend in selling it. We have tried that and did not succeed; so we took the other plan of making the business go by advancing the prices with the freight and spending additional money in selling it. In No. 1 territory we sell 100, for illustration and in No. 3 territory, where competition is the same and where our efforts to sell is greater, we sell 64. That difference of 10 cents per box is made necessary by advance in freight.

1054 The change in our classification advances us from 17½ to 20 per cent. and will very quickly bring up some points in No. 5 and No. 6 Territory, and our proportion of soap would drop. That is why I said we cannot stand it. We have not made any changes and did not make any because we were very loath to change our system, and because we hoped that some relief would come in some form. I was justified in that belief by being told by the President of one of the large railroad corporations that——

Mr. MAXWELL: We object to this statement of what someone told him.

Mr. PROCTER: I was advised not to be in a hurry; that the matter would be rectified and we awaited a final outcome.

Commissioner KNAPP: Take some concrete case to illustrate your meaning.

Mr. PROCTER: How do you mean.

The CHAIRMAN: Take some destination point, and show what the rate was and what it now is.

Mr. PROCTER: I do not know that I can do that specifically. Perhaps I can if I can get the rates. Suppose I take some point, say in Maine.

The CHAIRMAN: That would be an extreme illustration.

Mr. COLSTON: Take Dayton, Ohio.

Mr. PROCTER: I admit that it would not advance all of our

1055 points, but it would decrease the number of No. 1 points, and the tendency would be to curtail our territory.

Mr. COLSTON: Take some point in No. 3 or No. 5 territory.

Mr. PROCTER: Can I ask for some rates from Mr. Macdonald?

The CHAIRMAN: I want to get at exactly what you mean when you say your output cannot stand the change.

Mr. COLSTON: You ought to take some places in the Official Classification Territory.

Mr. PROCTER: Take a point in New England Territory, in New Hampshire or Vermont.

The CHAIRMAN: What point do you take?

Mr. PROCTER: Mr. Macdonald gives me Rochester and Boston.

The CHAIRMAN: Take Rochester in No. 3 territory.

Mr. PROCTER: They both are in No. 3.

The CHAIRMAN: Rochester and Boston, both?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: The Rochester rate is less than the Boston rate?

Mr. PROCTER: Yes, sir; we absorb a portion of that. I want to get at Western Territory. It is a little different from the eastern territory.

The CHAIRMAN: Take Rochester. How is it there?

Mr. PROCTER: Rochester under the old classification was 19 cents.

1056 The CHAIRMAN: In carload lots?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Under the new classification, you mean.

Mr. PROCTER: That is right. Under the New Classification it is 19 cents, and under the old Classification it was 16 cents, a difference of 3 cents. That would make a difference on a box of soap of 2½ cents on Rochester business. To Boston the New Classification is 29 cents and the Old Classification was 23 cents, or a difference of 6 cents. The difference per box would be 5 cents. That means that Boston would have to move up one classification.

Mr. MAXWELL: You mean one zone, don't you?

Mr. PROCTER: One zone. We move up there 5 cents.

The CHAIRMAN: Explain how it is that an advance of 2½ cents to Rochester wipes out your profit, or so materially reduces it, that the business is not fairly remunerative? I am assuming that under the old classification that you sold soap in Rochester at a profit.

Mr. PROCTER: Yes, sir.

The CHAIRMAN: And you are selling it now at the same price?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Though it costs you 2½ cents more to get it there.

Mr. PROCTER: Yes, sir.

1057 The CHAIRMAN: Now, is that 2½ cents sufficient to take up your profit, or very materially reduce them?

Mr. PROCTER: Yes, sir; materially reduce them.

The CHAIRMAN: The business is not profitable at Rochester under the present rate?

Mr. PROCTER: You must remember that No. 3 points, and that eastern territory is on an average, and on Rochester business we of course do make more money than we do on Boston, but the difference is greatest where we can least afford it. In Boston, where we can stand it the least, the difference is the greatest, owing to the change of classification. That has been the effect of it. About the profits our profits in No. 3 territory are sufficiently meagre. We make

the bulk of our profit in No. 1 territory. We swap dollars in No. 5 and in No. 3 we are between them.

The CHAIRMAN: So that increase in cost of delivering your product to Rochester of 2½ cents a box takes a large measure of your profit in selling soap in Rochester, and if that is so an increase of 5 cents in the cost of delivering soap in Boston must necessarily exhaust your profit?

Mr. PROCTER: It would relatively, to this extent: we make in Rochester a difference between the Boston and Rochester
1058 rates. As I told you that Eastern business is averaged, all of that Eastern territory in No. 3 territory; so we do have that difference of 10 cents a hundred between Rochester and Boston anyhow. Now, if we make that difference 15 cents more than it is now it would take all of the profit out of Boston, but we would have a profit still in Rochester. I admit we would have probably a small profit upon the whole of the business—a profit upon some of it and a loss upon part.

The CHAIRMAN: In No. 3 territory?

Mr. PROCTER: In that Eastern section probably, a small profit—a good many points at a loss and some at a profit.

The CHAIRMAN: The effect of the classification is to increase your cost of soap at Rochester 2½ cents per box?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: And delivery at Boston 5 cents.

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Your business was conducted on a smaller margin of profit at Boston than at Rochester?

Mr. PROCTER: Yes, sir.

Mr. MCLEOD: You made a slight error in your figures.

Mr. PROCTER: What was that?

1059 Mr. MCLEOD: The difference in the figures is only 3½.

Mr. MACDONALD: 4½.

Mr. PROCTER: I beg your pardon. I did not mean to mislead.

The CHAIRMAN: I think I get your idea; that taken in connection with your statements yesterday about your relative expense of selling your goods and maintaining your hold upon the trade in the more distant zones, the effect of this classification is to greatly increase the cost to you of delivering your goods in the more distant zones. That is your claim?

Mr. PROCTER: Yes, sir, where we can least afford it.

Mr. WARRINGTON: I would like to ask this question: Mr. Procter, are you able from your experience and from your knowledge of the prices of your own soap and the cost of handling it, to state the effect of this classification is upon the soap traffic generally? Can it stand it?

Mr. COLSTON: We object to the last part of the question, as to whether it can stand it.

The CHAIRMAN: Mr. Procter's statement should, of course, be limited to his personal knowledge on that subject.

Mr. WARRINGTON: Tell what you know. It——

Mr. PROCTER: It is customary for all the larger manufacturers

to adopt a similar plan of selling; I mean in advancing their
1060 prices in reaching more distant points. I think that was testified to in one of the depositions.

Mr. WARRINGTON: State from your own observation how that is.

Mr. PROCTER: I know that is a fact. Our experience justifies me in thinking that the effect would be similar.

The CHAIRMAN: Let me see about that.

Mr. PROCTER: It is similar because their freight is local.

The CHAIRMAN: I can understand from your statement that you are under a much greater disadvantage in selling in Boston than you were before this change in classification.

Mr. PROCTER: We are.

The CHAIRMAN: Now is not your New York competitor under a corresponding disadvantage in selling in Chicago or Cincinnati?

Mr. PROCTER: Yes, sir; it localizes trade.

The CHAIRMAN: Then does that not have the effect of diminishing his competition in territory nearer to your factory?

Mr. PROCTER: It probably would in some of it. I suppose the ultimate effect would be to circumscribe territory.

The CHAIRMAN: Since it applies to all soap makers, and since all grade prices according to zones of territory.

Mr. PROCTER: As to the majority of them.

1061 The CHAIRMAN: And I suppose those zones correspond in a general way to your own and that the differences which they make in prices in the different zones correspond to the differences which you make?

Mr. PROCTER: Approximately; yes, sir.

The CHAIRMAN: Since that is a general fact as to all the large manufacturers, are not the advantages and disadvantages resulting from this change in classification equalized as between the different large producers?

Mr. PROCTER: Among the very large producers; yes, sir, but in a majority of cases no, because the great majority of cases are already local and are not so much affected. For instance we do not have the competition of the average New York soap manufacturer in Cincinnati. The bulk of the trade is by local manufacturers and they would not be affected. The ultimate outcome would be, however, as you stated; that among those soap makers who are competing over that territory, in their near by territory they would not have to meet the competition of these outside men, and the area of distribution would be curtailed.

The CHAIRMAN: It comes to this, then, that, although the
1062 advantages and disadvantages might be equalized between the very large producers who cover a very great extent of territory that in respect to competition that comes from the small local manufacturers, he is put to no disadvantage, and you are.

Mr. PROCTER: And we are practically.

The CHAIRMAN: That is the way the thing would work out.

Mr. PROCTER: Yes, sir.

Mr. COLSTON: That is it would give the local man a better chance?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Against you than he has now?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Or to put it concretely the local manufacturer of soap would have a greater advantage in Boston territory than he had.

The CHAIRMAN: And the local manufacturer in Cincinnati would have a corresponding advantage over the Boston manufacturer in that territory?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: What is the effect upon owners of plants who under the old classification built them up, with great capacity and made large expenditures to extend competition throughout the country?

1063 Mr. COLSTON: We object to that.

The CHAIRMAN: That is argument, is it not, Mr. Warrington?

Mr. WARRINGTON: Very well.

Mr. MAXWELL: Mr. Procter, have you a plat of this Ivorydale & Millcreek Valley Railway?

Mr. PROCTER: No, I have not.

Mr. MAXWELL: Would it be very difficult for you to prepare one, giving the location of the buildings and the tracks with the exact distances?

Mr. PROCTER: I could not prepare one here; no.

The CHAIRMAN: Have you any advertising matter on which that substantially appears?

Mr. PROCTER: I do not think we have. We have some photographs, possibly, upon which it would appear, but it would not have the distance of course.

Mr. MAXWELL: We would like to have a plat showing the distances and locations of these buildings.

Mr. WARRINGTON: No one here could give you those distances.

Mr. MAXWELL: Will you prepare such a plat?

Mr. PROCTER: I will either prepare or get you one.

The CHAIRMAN: A photograph or lithograph which would
1064 show the general location of their road and buildings with reference to this road, I suppose, would answer your purpose. You do not ask Mr. Procter to have an engineer's map made.

Mr. MAXWELL: No, sir; we don't ask for that.

The CHAIRMAN: You can prepare it and send it here and it will be put in evidence.

Mr. MAXWELL: Of course most of us are familiar with the location, but we do not know whether your honors have got from what has been said a very accurate idea of the location. Mr. Procter, your plant immediately adjoins the right of way of the Cincinnati, Hamilton & Dayton Railway does it not?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: From what building are the goods taken, the shipping warehouse on your premises?

Mr. PROCTER: From the packing rooms immediately back of them.

The CHAIRMAN: You will pardon me, Mr. Maxwell, the C. H. & D. Road runs about north and south?

Mr. PROCTER: Yes, sir; approximately.

The CHAIRMAN: And you are on the east side of it?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Does your property extend east to any other railroad?

Mr. PROCTER: Yes, sir.

1065 The CHAIRMAN: To what road?

Mr. PROCTER: To the B. & O. S. W. and the Big Four.

The CHAIRMAN: Are they right together?

Mr. PROCTER: Their junction is made at the South-eastern part of our property.

The CHAIRMAN: Does the Big Four run north and south also?

Mr. PROCTER: Yes, sir. I think it is north and south.

The CHAIRMAN: So the Big Four and C. H. & D. are substantially parallel at that point?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: And your property lies between them?

Mr. PROCTER: Yes, sir. And there is also some property between the Big Four and the B. & O. S. W.

Mr. WARRINGTON: What street runs along cutting your plant in two, or your property between the Big Four and your factories?

Mr. PROCTER: Spring Grove Avenue.

Mr. MAXWELL: What was the building from which you said the soap was brought to the warehouse?

Mr. PROCTER: From where the soap is packed, the framing-houses.

Mr. MAXWELL: How is it taken from the packing house to the warehouse?

1066 Mr. PROCTER: By a slide.

Mr. MAXWELL: Is the soap packing house the most southerly of your buildings?

Mr. PROCTER: There is a pumping house east and, up further east and south we have several houses.

Mr. MAXWELL: Then there is no railroad hauling between the packing house and the shipping house?

Mr. PROCTER: No, sir. It is conveyed by a slide.

Mr. MAXWELL: From what house are your goods brought to your packing house?

Mr. PROCTER: The soap is pumped from the kettle houses into the crutching house, and is there crutched, and is then hoisted direct into the packing house.

Mr. MAXWELL: That is by hand?

Mr. PROCTER: That is by elevator.

Mr. MAXWELL: Then are the railroad tracks used in the transportation of the soap product at any stage from the time the raw material is taken in until it is ready to be shipped out?

Mr. PROCTER: Practically not at all. The only exception would be when we would have some surplus of raw material which we wanted to store some place and would move it over to be emptied. It

is very seldom that happens, because we buy the bulk of our
1067 product in tank cars and that is pumped into the storage tank, and when it is in packages it goes at once to be stored, in order to save leakage. So practically the stuff is all brought from the railroads to our steaming house and steamed out, and then delivered to the other houses, and I do not believe there is practically any switching between the buildings in the course of manufacture.

Mr. MAXWELL: Where are the boxes taken? To what building are they taken from your box factory?

Mr. PROCTER: They are taken to the packing house.

Mr. MAXWELL: Do you use the railroad in taking your boxes from the box factory to the packing room?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Do those switch tracks run in between all the buildings, or only between certain ones?

Mr. PROCTER: Only between certain of them. All the switches are on a line running across between the railroads, with the exception of two tracks. One is a spur to our boiler house—to one of our boiler houses, and there is a spur into the candle and glycerine factory. All other tracks are in effect main tracks running through in connection with the main connecting line.

Mr. MAXWELL: In connection with what?

1068 Mr. PROCTER: In connection with the main connecting line. I believe I am accurate about that.

Mr. MAXWELL: Then the only delivery track is from this warehouse?

Mr. PROCTER: I did not say that.

Mr. MAXWELL: Well, will you explain what other delivery track there is?

Mr. PROCTER: The delivery track comes from the warehouse and comes up to the C. H. & D. and switches across to these other delivery tracks over to the Big Four and to the B. & O. We could not take our warehouse track and run it in a straight line, continue it out easterly to the other road; the question came up on crossing some streets and also there was a question of curvature. We made our connection of tracks further to the north. It is also to our advantage because a great deal of raw material comes in over different roads to be delivered at the steaming plant.

Mr. MAXWELL: Does everything that comes from the C. H. & D., the B. & O., or the Big Four come west?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: On the same track on which goods are delivered to the C. H. & D.?

Mr. PROCTER: Part way.

1069 Mr. MAXWELL: And then goes east to the B. & O. S. W.?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: There is no other track by which you deliver to the railroad companies than the one you described? I don't understand.

Mr. PROCTER: What don't you understand?

Mr. MAXWELL: I want you to tell us whether there is any other

track by which you deliver to any railroad company than the one you have described, leading from the warehouse to the C. H. & D. and thence from that track to the Big Four and the B. & O. S. W.?

Mr. PROCTER: There may be a little switch into the B. & O. S. W., but is not part of the I. & M. V. Railroad, to the pumping station, a mile away.

Mr. MAXWELL: Are practically all the goods delivered to you delivered at one house, one building, or are they delivered at several buildings?

Mr. PROCTER: They are delivered to several buildings. Our coal is delivered to one building; glycerine is delivered at the glycerine buildin*f* and our soap materials are delivered to one of three buildings.

Mr. MAXWELL: Then that material may be delivered to one of any three or four buildings but they are all on one track?

1070 Mr. PROCTER: Yes, sir. They are on the through track, or main track running through to the Big Four.

Mr. MAXWELL: Is that north of the warehouse?

Mr. PROCTER: Oh, yes.

Mr. MAXWELL: How much north?

Mr. PROCTER: About 600 feet.

Mr. MAXWELL: What is done in this warehouse? Are the goods that are ready for shipment stored there first?

Mr. PROCTER: Sometimes.

Mr. MAXWELL: And assorted?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: And then taken from the various places in the warehouse to the platform?

Mr. PROCTER: Sometimes and sometimes taken from the slide into the car, just as orders come.

Mr. MAXWELL: How many laborers do you have employed at that warehouse?

Mr. PROCTER: I do not know exactly.

Mr. MAXWELL: About how many? Give us your best information.

Mr. PROCTER: I think in that warehouse gang, in the warehouse proper, where the men handle the slide, a portion of their

1071 time is used in storing soap, and the balance in loading cars upon the track, and I think there are five men; the balance of the four are strictly a shipping gang who do nothing but that.

Mr. MAXWELL: How many are in the shipping gang?

Mr. PROCTER: I think in that warehouse crew there are 18 or 20 men, but I am giving this from recollection.

Mr. MAXWELL: Do you mean there are 18 or 20 men constantly engaged in loading the product?

Mr. PROCTER: In handling the product. Five men are doing that other work.

Mr. MAXWELL: Then there are 13 engaged in loading?

Mr. PROCTER: If 18 is correct. I only know these things approximately.

Mr. MAXWELL: What wages are paid to those men?

Mr. PROCTER: They vary from $1.50 to $2.00 a day. Of course they get their profit sharing on top of that.

Mr. MAXWELL: How many clerks are there in that building who devote themselves to shipping?

Mr. PROCTER: To nothing but shipping, I think, 4 or 5.

Mr. MAXWELL: What is there to keep 4 or 5 clerks engaged?

Mr. PROCTER: When I say engaged in shipping I mean their work is entirely upon railroad work.

Mr. MAXWELL: What do they do?

Mr. PROCTER: They have to keep all of the record and records of all these details, and there are about 5 clerks in that office who attend entirely to that shipping department.

1072 Mr. MAXWELL: You cannot tell what they do?

Mr. PROCTER: They attend to the billing, the bill of lading, and check shipments.

Mr. MAXWELL: Do they make bills for goods?

Mr. PROCTER: No; strictly railroad work.

Mr. MAXWELL: You say it takes four or five men to make bills of lading for your warehouse?

Mr. PROCTER: That is what it does.

Mr. MAXWELL: Do you know how many shipments there are per day?

Mr. PROCTER: It is an awful number. I think our shipments average over 350 a day. I may be wrong about that, but I think I noticed the tickets last December and they were up over one hundred thousand.

Mr. MAXWELL: Does that mean shipments to separate consignees?

Mr. PROCTER: Yes, sir; separate billing out—not separate consignees. Yes, I suppose it would be separate consignees.

Mr. MAXWELL: I want to know.

Mr. PROCTER: Well, it is. What I thought you meant was whether it is charged to separate people. It is consigned to separate people.

1073 Mr. MAXWELL: I do not yet know whether you mean 350 different purchasers or 350 bills of lading?

Mr. PROCTER: 350 bills of lading.

Mr. MAXWELL: And in these cases where you consolidate shipments for twenty, thirty or forty, or as high as a hundred on one bill of lading, you count that as one bill of lading?

Mr. PROCTER: That I do not know as to how that is handled.

Mr. MAXWELL: When the C. H. & D. first made this contract with you for $400 a month, was there any other railroad there?

Mr. PROCTER: None in connection with the Procter & Gamble firm?

Mr. MAXWELL: How long was the C. H. & D. the sole railway that had a connection with your plant?

Mr. PROCTER: I think just as soon as the other roads built in their connections they entered the same agreement. I do not remember how long it was.

Mr. MAXWELL: Was it several years?

Mr. PROCTER: I do not remember.

Mr. MAXWELL: Did you make the agreement between the C. H. & D. and your company?

Mr. PROCTER: No.

1074 Mr. MAXWELL: Did you make the agreement between the C. H. & D. and any other company?

Mr. PROCTER: No.

Mr. MAXWELL: How do you know about that then?

Mr. PROCTER: I know we got checks from them every month and I know it was a part of the agreement, just as I know any other part of the business I do not do myself.

Mr. MAXWELL: Did you get an allowance of $400 a month from the Big Four?

Mr. PROCTER: No, I do not think it was. I do not remember what the allowance was. I said there were different allowances from different railroads.

Mr. MAXWELL: What allowance did you get from the B. & O. Southwestern?

Mr. PROCTER: I do not remember.

Mr. MAXWELL: You got from each railroad such an allowance as you could get from them and it was not uniform?

Mr. PROCTER: It was not uniform. It was such agreement as the railroads made for their services.

Mr. MAXWELL: And the agreement with each railroad was separate?

1075 Mr. PROCTER: Separate, and made in proportion to what business we figured we were doing. We were doing more business with the C. H. & D. at that time.

Mr. MAXWELL: Did you get a larger or smaller amount from the Big Four?

Mr. PROCTER: I think it was smaller.

Mr. MAXWELL: And the B. & O. S. W.?

Mr. PROCTER: I do not remember, I think smaller.

Mr. MAXWELL: What company did you first make an arrangement with based on cars?

Mr. PROCTER: That I do not remember.

Mr. MAXWELL: Was it with the C. H. & D.?

Mr. PROCTER: No, I do not think it was. I think it was with all of them. I think the agreement was made with all the roads at that time.

Mr. MAXWELL: Well, when was it made?

Mr. PROCTER: That I do not remember.

Mr. MAXWELL: Do you know whether it was the same arrangement with each road or whether in respect to the tonnage or car allowance you made with each such an arrangement as you could.

Mr. PROCTER: I think it was similar with all roads.

Mr. MAXWELL: Is it not a fact that the arrangement with

1076 the C. H. & D. for so much per month still continued after you made an arrangement with the Big Four or with the B. & O. Southwestern for a car and tonnage rate.

Mr. PROCTER: That is not my recollection.

Mr. MAXWELL: Who was it that brought about this arrangement for a car tonnage rate, a substitution for the gross amount.

Mr. PROCTER: I do not remember that. I do not know whether that came from the railroads or ourselves.

Mr. MAXWELL: You had nothing to do with the negotiations?

Mr. PROCTER: No.

Mr. MAXWELL: Did you have anything to do with directing it?

Mr. PROCTER. No. I had something to do with whether we should attempt to do so and so on the question of policy of changing it.

Mr. MAXWELL: Well, do you remember what the first arrangement was, the rates, when an arrangement was substituted for the gross allowance.

Mr. PROCTER: No, I do not. I do not remember the rates under the existing one.

Mr. MAXWELL: Do you remember whether it was different on inbound than outbound business?

1077 Mr. PROCTER: I do not remember that.

Mr. MAXWELL: Or what it was on coal?

Mr. PROCTER: I do not remember that.

Mr. MAXWELL: Or how at all if different from the arrangement as disclosed by the agreement of January 1st, 1896?

Mr. PROCTER: No, I do not remember the difference.

Mr. MAXWELL: Then, we cannot get any of these details from you.

Mr. PROCTER: Not from me.

Mr. MAXWELL: Do you keep a separate account showing the sales of glycerine?

Mr. PROCTER: Yes.

Mr. MAXWELL: A separate account showing sales of ste-ric acid?

Mr. PROCTER: No, of candles; not of ste-ric acid. The ste-ric acid is a portion of the candle business.

Mr. MAXWELL: The sales of ste-ric acid are not distinguished from the sales of candles?

Mr. PROCTER: Not a separate account.

Mr. MAXWELL: What other sales does the candle account contain besides candles and ste-ric acid?

Mr. PROCTER: Red oil and candle tar, I think are the other products.

1078 Mr. MAXWELL: Then, the candle account includes candles, candle-tar, red oil and ste-ric acid?

Mr. PROCTER: I think that is all. The candle factory does produce glycerine, which is sold to the glycerine account.

Mr. MAXWELL: What does the glycerine account include?

Mr. PROCTER: Simply our glycerine business.

Mr. MAXWELL: Is that anything except the sales of glycerine?

Mr. PROCTER: The sales and purchases of glycerine, of course.

Mr. MAXWELL: You do not keep a separate account, I suppose otherwise than it is disclosed by the verious transactions of the glycerine, sales from glycerine purchases and the glycerine sales from by-products?

Mr. PROCTER: I do not know that I understand that.

Mr. MAXWELL: I will ask the stenographer to repeat it.

The question was repeated by the stenographer.

Mr. PROCTER: No, as I understood your question.

Mr. MAXWELL: A separate account?

Mr. PROCTER: A separate account.

Mr. MAXWELL: What other account is there? There is the candle account and the glycerine account?

Mr. PROCTER: And the soap account.

Mr. MAXWELL: What does that soap account include?

1079 Mr. PROCTER: It includes our soap business.

Mr. MAXWELL: Is that account divided up and segregated so as to show the Lenox soap account, the Ivory soap account or any other brand account?

Mr. PROCTER: No.

Mr. MAXWELL: All sales of soap, no matter of what brand, are credited to the soap account?

Mr. PROCTER: Yes.

Mr. MAXWELL: What other account is there?

Mr. PROCTER: The manufacturing account.

Mr. MAXWELL: Yes.

Mr. PROCTER: That is practically all. Those are the three items.

Mr. MAXWELL: Now, what expense account do you keep.

Mr. PROCTER: We keep the regular standard expense accounts, —such as steam, you mean—you do not mean, insurance, taxes and those kinds of things?

Mr. MAXWELL: Yes, I want to know how you itemize your expense account.

Mr. PROCTER: We itemize them in that way, steam——

Mr. MAXWELL: That includes coal, I suppose?

Mr. PROCTER: Yes, and light.

Mr. MAXWELL: Do you have an electric plant?

1080 Mr. PROCTER: Yes, and water, and I suppose we would have wages.

Mr. MAXWELL: Is that one account?

Mr. PROCTER: No, these accounts are kept separately in all three departments. They are kept separately, with the exceptions I tell you. There are a few accounts that have to be allotted, for instance like water. I said that account was one where they ran into each other. The electric light will do so also. Well the fire account does not amount to anything.

The CHAIRMAN: How about taxes and insurance?

Mr. PROCTER: Those are kept and allotted to the different departments in proportion.

Mr. MAXWELL: You mean there is one light account, one water account, one insurance account, one tax account, and then at the end of the year you charge to the capital account a certain proportion of those various accounts.

Mr. PROCTER: Every month, except the insurance and taxes. They are charged every six months.

Mr. MAXWELL: But at stated intervals, either from month to month or periodically, you charge out of light, water taxes and in-

surance account a certain proportion to the candle account
1081 a certain proportion of the glycerine account and a certain proportion to the soap account.

Mr. PROCTER: Yes sir; the light and water and those physical accounts are allotted in direct proportion to the service rendered.

Mr. MAXWELL: And then how do you apportion the accounts like taxes?

Mr. PROCTER: Those are apportioned in relation to the value of the property as we have estimated it.

Mr. MAXWELL: That is, according to an estimate you place upon the value of the plant devoted to the candle manufacture.

Mr. PROCTER: No, it is a value as regards its taxed value.

Mr. MAXWELL: Now, then, in the candle department you have a separate wages account, have you not?

Mr. PROCTER: Yes sir.

Mr. MAXWELL: The wages paid to persons engaged in that department alone.

Mr. PROCTER: Yes sir.

Mr. MAXWELL: Do you divide that wages account up at all? Itemize it—or is it just wages account?

Mr. PROCTER: It is divided in the different departments into departments again. It goes through such a form that we are able to check back our cost, as in any manufacturing business must be done.

1082 Mr. MAXWELL: Now, take the soap account in the soap department, how is your wages account itemized?

Mr. PROCTER: In the soap department?

Mr. MAXWELL: Yes sir.

Mr. PROCTER: Steam and storage so much; soap factory or boiler and kettle department, so much; Ed. Drury's Department so much, and so on through. It is divided for each department.

Mr. MAXWELL: How do you keep your advertising account? How is that apportioned, if at all?

Mr. PROCTER: Our advertising account is charged directly against Ivory soap.

Mr. MAXWELL: All against Ivory soap?

Mr. PROCTER: No, all Ivory soap advertisements; but the balance of our advertisements is small and only done in special instances as introductory; for instance, we never go into a newspaper or magazine or display advertising for a special brand of soap.

Mr. MAXWELL: I understood you to say you did not separate your soap accounts into an Ivory account and other accounts, but have only one account?

Mr. PROCTER: That is right. I was thinking of the manufacturing of it and the sale. We keep the advertising account
1083 separate.

Mr. MAXWELL: But you charge that to the soap account?

Mr. PROCTER: No, it is charged against profits in the full amount—charged against the soap account.

Mr. MAXWELL: I am correct in understanding that you do not have any separate Ivory soap account?

Mr. PROCTER: No separate Ivory profit and loss account.

Mr. MAXWELL: Nor any separate account to which the sales of Ivory are credited.

Mr. PROCTER: No.

Mr. MAXWELL: They are credited to the soap account the same as Lenox, Banjo, Everyday and other soaps; is that correct?

Mr. PROCTER: Yes.

Mr. MAXWELL: Now, in your expense accounts in your soap department, you say that in the manufacturing department you itemize them so as to show the expenses in steam, Ed Drury's room and such and such a room. How about your traveling salesmen? Do you have separate accounts?

Mr. PROCTER: No, that is charged into the soap account.

Mr. MAXWELL: But have you one account to cover expenses of traveling salesmen? Is the wages of traveling salesmen,
1084 is that a separate expense account by itself or not?

Mr. PROCTER: The wages account, I think, is charged into selling expense. I do not know what account that is charged to.

Mr. MAXWELL: Is there only a wages and traveling expense account that is kept with respect to the soap department?

Mr. PROCTER: Yes.

Mr. MAXWELL: Is that further itemized?

Mr. PROCTER: No.

Mr. MAXWELL: So your account does not distinguish the wages and traveling expenses of Ivory soap as distinguished from Lenox?

Mr. PROCTER: No.

Mr. MAXWELL: Give me the other principal expense accounts of the soap department. There are wages?

Mr. PROCTER: Insurance and taxes. I do not know whether you call repairs and maintenance.

Mr. MAXWELL: What was the name of this account, the account to which you charged the wages and traveling expenses of salesmen?

Mr. PROCTER: I do not know what name it would be. I suppose it would be salesmen's expense accounts. I do not know.

1085 Mr. MAXWELL: Now, the insurance. All insurance in the soap department is charged to the insurance account.

Mr. PROCTER: Yes sir.

Mr. MAXWELL: There is no separation of that account so as to show insurance ascribable to Ivory soap or Lenox soap?

Mr. PROCTER: No.

Mr. MAXWELL: The same way with taxes, I suppose?

Mr. PROCTER: Yes sir.

Mr. MAXWELL: And the same way with repairs?

Mr. PROCTER: Yes.

Mr. MAXWELL: You have already said that it was the same way with salesmen.

Mr. PROCTER: Yes.

Mr. MAXWELL: In other words, as I understand, you do not undertake to separate the expense accounts in your special department with reference to the brands of soap?

Mr. PROCTER: No, not in our general books.

Mr. MAXWELL: It is a general charge to an expense account that relates to the entire soap business.

Mr. PROCTER: I am speaking of our general books. That is true. We do *not* not.

1086 Mr. MAXWELL: Well, I suppose, by your general books you mean your books kept by your bookkeeper?

Mr. PROCTER: Yes, we do keep a set of books where all this is kept divided, but it does not show on our general books. It is merely so as to know the actual cost of each article.

Mr. MAXWELL: How do you divide the general expenses of your business—salary of the general manager, for instance, and of the treasurer and other general officers?

Mr. PROCTER: Those are charged against—at the factories they are allotted around the different departments, and a portion of my salary is charged against them, against the various departments.

Mr. MAXWELL: A portion against candles, a portion against glycerine and a portion against soap.

Mr. PROCTER: Yes, sir; it is allotted up so as to make each bear a portion. In the office the charge would go against the soap and candles in the same proportion as they are benefitted. In other words, our sales of candles are entirely on commission and the expense chargeable against that in the office, other than as appears as a direct charge against each transaction, is in effect nothing.

1087 Now, in our sales of soap, it is otherwise, and our billing—in our orders for billing, certainly we make 95 orders on shipments as against one on candles, if not 100.

Mr. MAXWELL: Well, you divide the general expenses between these various departments in some way satisfactory to yourself?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Or in proportion?

Mr. PROCTER: Yes.

Mr. MAXWELL: Then, at the end of the year you know what the profits of your soap department are?

Mr. PROCTER: Yes.

Mr. MAXWELL: Will you please tell us what they were for the year 1899?

Mr. PROCTER: Do you want me to tell you the profits on competitive brands of soap?

Mr. MAXWELL: No, on the soap department?

Mr. WARRINGTON: What is the question?

The CHAIRMAN: He asks the profits of the soap department for 1899.

Mr. WARRINGTON: If your honors please, we wish to put a question to you as to whether that is material in this case. Of course, we realize that you have broad and extensive powers and yet

1088 you will pardon me, I hope, if I make a statement about this feature of it.

The CHAIRMAN: We aim to avoid the disclosure of business secrets which business men desire not to have made public.

Mr. WARRINGTON: That is all I allude to.

The CHAIRMAN: Unless it seems material that the fact should appear for some purpose connected with the inquiry. Mr. Maxwell, do you think Mr. Procter should be required to give that?

Mr. MAXWELL: Yes, sir; if your honor please, we consider this a matter of the highest importance.

The CHAIRMAN: He stated the profits on——

Mr. MAXWELL: On what he is pleased to call competitive soaps. We cannot stop there. It is already quite manifest if your honors please, that he undertakes to arrive at that by some segregation of expenses and some ascription of cost to competitive soap which, in the nature of things, cannot be ascribed to competitive soaps.—Wages, expenses, of selling, and what not; and I have gone into this inquiry with respect to the accounts for the purpose of showing what I suppose appears very clearly to your honors now, that they divide their business up into three departments and they
1089 credit to the soap account the sales generally in one soap account of all brands of soap, and they charge to the soap account the expenses of that department of every kind, not undertaking to segregate the expenses and to ascribe part of them to Ivory soap, part to Lenox soap and part to anything else; but to the soap department, and then they take an inventory at the end of the year and know thereby what the profits of their soap department are. Now, the inquiry which these gentlemen have invited by their complaint in this case is as to the reasonableness of the charge that is made for the transportation, not of some particular soap, but of soap generally, and the question is before the Commission, not whether this would be a reasonable charge or not as affecting this particular plaintiff, whose situation in that respect does not appear to be very different from that of the principal manufacturers—the question is not whether that is reasonable if he manufactured and sold only Lenox soap or Banjo soap, but the question is whether it is reasonable, taking into consideration all the circumstances of the case, and one of the most important circumstances is that it is a rate which applies equally to Ivory soap. It applies to all their soap business, and therefore the question is as to the effect of this
1090 classification upon the soap business, to all the product of which it applies equally, and probably no other classification, if we were disposed to make it, would stand under the rulings which your honors have already made. Under the rulings which your honors have made, we probably would not be permitted to make a separate classification of Ivory soap. But whether we would or not, we have made a classification which applies to all the soaps that this concern sells, and in challenging the propriety of the rate which that classification imposes, the question is what effect does it have upon the transportation of soaps as the plaintiff makes them, as it applies to all soaps. Now, in the case which was before the Commission in 1890, the Commission remarked in rendering its decision that it did not appear from the evidence in the case what the profits of the soap business were.

The CHAIRMAN: Pardon me. Mr. Warrington, what have you to say?

Mr. WARRINGTON: If your honors please, our first proposition is that profits at most are irrelevant to a question of this character, and they ought to be. In this specific case, that rule derives emphasis from the fact that we bring this suit to obtain protection if we can upon our competitive brands of soap. If your honors would pardon an illustration, I could make it clearer. Suppose in
1091 one of the department stores, with which everybody is familiar—take the Siegel, Cooper & Company, of Chicago & New York, or the Wannamaker Company of Philadelphia and New York, we could speak of some in our own city, but they would not be as familiar to you, and add to the clearness of the illustration—suppose the shoe department or any other department of that store were injuriously affected by a classification and that that department was suffering lots and that that industry throughout the country was suffering lots, and the question would arise as to whether relief could be obtained in respect of that industry so represented by one of the departments I have alluded to. Can it be that the fact that other departments of the same store were earning a profit would be relevant to the question as to whether that industry in the unprofitable portion should have relief? Could it be that because the owner of the several departments was prosperous, other and different departments, that he should be denied relief as to the one which was not prosperous? That will not bear analysis. No one can make that claim and shut his eyes to the fact that the vice of the argument lies in the fact that the ownership of the two businesses, one branch prosperous and the other not so, is in one ownership.
1092 That ownership is merely accidental. It is not a constant factor, that must obtain when the question is submitted to a representative national body, as this is. The moment that you would sever the ownership and place the prosperous portion in "A" and the unprofitable portion in "B," then you come directly to the question whether "B" would be entitled to relief. Now, can the fact be that because "A" sells out to "B" or "B" to "A," that that relief will not go?

The CHAIRMAN: Pardon me, but your illustration does not seem to me to go to the question that is now presented. Surely if a merchant of such character as you describe should complain of the rates imposed on sugar, it would not be any answer to say he is making a profit, and a large profit on coffee on tea or spices; but suppose a manufacturer of shoes, if you please, complains of the rate on shoes; it turns out that shoes of all kinds and values are one class and the proof shows that 80 per cent. of his product of that one plant are what he calls competitive, and he complains of the rate applied to his product and says the product cannot bear it. Now, would there not be some propriety in showing in answer to that that on the other 20 per cent. of your valuable shoes made in the same plant
1093 he has a very profitable business? The same thing might be true about clothing.

Mr. WARRINGTON: Your honors, I realize that, and I do not wish to shirk from the question and the force of your suggestion. It is in the line of what I was going to say, but it seemed to me that it

was pertinent to any analysis of the present question to employ an illustration similar to the one I had mentioned. For the moment, if you take the question as your honor puts it, why, necessarily, you are stating the very identical case that we have here possibly and the argument cannot progress on that theory; if you will pardon me if I suggest that there is an assumption in that of the very question in debate. If the same thing is alluded to as wages here and we say that that same thing shall be so and so, we necessarily assume that the thing under discussion shall be. Now, I was endeavoring to show that single ownership is accidental and cannot control, and now when you come to apply the principle that you suggest let us see whether it makes any difference whether this happens to be competitive soap, as we have called it, or non-competitive soap.

The CHAIRMAN: Pardon me for interrupting your argument Mr. Warrington, we will take a recess until 2 o'clock.

At 12.45 o'clock, the Commission took a recess until 2 o'clock P. M.

1094 After Recess.

The CHAIRMAN: You may proceed, Mr. Warrington.

Mr. WARRINGTON: If it please your honors, in presenting a question of this kind I realize the difficulties and the disadvantages that one is under. The tendency would always be to receive the evidence, and I am not complaining of that rule at all. The only contention that I am making at this stage of it is that there is such a marked distinction between the Ivory soap and the other classes, that the analogy, there would perhaps be debate about. There certainly has been. If the court please, if you take subjects of the same class like coffee and sugar, the very fact that they are in the same class shows that the railroad companies regarded them as possessing characteristics of such a similar character as to justify their treatment as one and the same article.

Now, take Arbuckle. Arbuckle, as I understand, deals in both those commodities. Suppose Arbuckle should show that the railroad company was creating prejudice against one or giving undue preference, or anything of that kind, in a way that would satisfy any mind of its truth, and that that one—I will say sugar—was unprofitable, could the fact that he was making money on coffee, if
1095 that were true, affect the question, and does not that show that the circumstance of ownership is an accident and is therefore not to control the problem.

Now, let us take a rule that this tribunal itself has adopted. If we were making profits on the sugar in the case supposed, if the Arbuckle Company were, and still the law were being violated would that fact be relevant. Your honors will remember the window shade decisions as they are reported in the 6th volume of your reports, page 557, Page *v.* the Delaware, L. & W. R. R. Co. I think I may read from it because of its obvious application to any case where the matter of profits is sought to be introduced. It is there said:

"Whether complainants or other shade shippers have been pros-

pering under the existing classification does not determine the question whether the classification of window shades is lawful. The aim of investigations under the provisions of the Act to Regulate Commerce is not to ascertain how high classification or rates the affected industries will stand; the purpose of such investigations is to determine the duties of carriers and the rights of shippers and the public under the law;"

citing James *v.* Canadian P. R. Co. Another paragraph
1096 of the same decision, page 556, is:

"Another claim insisted upon by the defense is substantially that if the rates involved in the complaint against the classification of window shades are not shown to be unjust and unreasonable in themselves,—that is, practically without reference to rates charged by the roads on other commodities,—they ought not to be reduced. The terms 'reasonable and just,' 'unreasonable or unjust,' 'Undue or unreasonable preference advantage,' 'undue or unreasonable prejudice or disadvantage in any respect whatsoever,' and 'unjust discrimination,' as used in the statute, imply comparison, and rates must bear just relation to each other as well as be reasonable *per se.*"

Now, if it be the law of this tribunal that profits are not relevant on the article itself, much more ought it to be on an article that is not the subject of complaint. Applying this further, we have taken pains to describe Ivory soap and also to describe competitive soaps. We did this for the purpose of first explaining the subject about which we raised complaint and secondly, to justify us in claiming the division between the two classes. Is there any difference now, so far as principles of classification are concerned between Ivory soap as it is now shown to be on the one hand and competitive soaps as
1097 they are shown to exist on the other hand. Are there not just as many differentiating characteristics as between these two articles as there are between coffee and sugar. Is there anything in a name? Are not the differentiating attributes to be ascertained and fixed by something other than the mere name or names of the articles? When you consider Ivory soap in the light of the facts as they are here related, it is an article that is not in competition in the markets. It is an article that meets with a special demand and satisfies that demand to the extent of the sales at least that are made of it. It stands upon its own merits. The sales of it are effected in a different way from sales of the competitive soaps. For instance in the matter of advertising, the Ivory carries with it an expense that the competitive soaps do not carry. They have to be and they are operated in the markets in different ways.

Now, if you were to take the profits on Ivory, what would you do with that subject when you came to a decision of the cause? How would it help the Commission? How could you settle anything touching the competitive business by a reference to the Ivory business. Surely we shall not lose sight of the fact that one article
1098 or one set of articles which the Procter & Gamble Company use in the market are representative of a great class of articles throughout the United States—I mean its competitive soaps. But when you turn to Ivory soap, is that true? If the Procter & Gamble

Company were here asking relief in respect of Ivory soap, as it is in regard to competitive soaps, and that its relief was sought only as to Ivory soap, would we not be told that that is the equivalent of a proprietary article? Suppose there were a patent medicine, or suppose there were any other sort of a patent and no one but its owner could manufacture and sell it. Suppose it were protected by a trade-mark in the sense that the courts of the country would give the person who owned the trade-mark and the good will arising out of it, protection. Would it not be said that in that kind of a case your business is personal; your business is not representative, and everything appertaining to it would be relative to the question of whether it was properly classified and whether there was any undue advantage or any undue preference or any unreasonable price? But that cannot be—when you come to a representative article, an article which is dealt in by a great class of people in the various states of the
1099 country,—for then your honors are necessarily obliged to view it from a plane as broad as the business itself. So that our competitor's brands must be presented here, if there is any merit now in our complaint precisely the same as if we had no other brands of soap at all. Suppose, may it please your honors, that one of the soap makers were willing to undergo the tremendous trouble and expense of maintaining an action of this character and weight and endure all the trouble—I am not saying it complainingly—that one has to go through to get an order enforced, and all that—suppose one of these men were here. Let me take Mr. Delemater, whose deposition has been read. Let me take Mr. Shultz or Mr. Lautz—any of those men. None of them has a soap like that of Ivory. Every one of them is engaged in the manufacture and sale of competitive brands. Would it not be quite as relative to his case to say that Ivory was profitable as it is here—I mean now so far as the principle of classification and the principles underlying the subject of this inquiry are concerned? If you can turn to different articles of the same class for the purpose of determining whether that class shall stand or not, I do not see how ownership of one or more articles of the class in one person is
1100 going to extend the inquiry beyond the particular subject that is injured any more than it would if one were here who owned only the particular article which was being prejudiced or otherwise injured under the principles or rules of the Interstate Commerce Act. So, your honors, as it seems to me, cannot be aided—your ultimate decision would have to be resolved upon grounds other than what appear in respect of the Ivory soap profits. Now, if that be true, I rely upon the decision already made here as well as on the obvious analogy and want of analogy sought to be investigated into, and I pass then to another feature of this argument.

There is always a hesitancy about an owner and manufacturer revealing to his competitors what he is doing in any particular line. He does not wish if he can avoid it to tell what he is making on this or on that. When it comes to the competitive articles, a degree of comparison which reaches near the point of accuracy can be made by the different manufacturers among themselves whether any of them tell their secrets or not. If I am making the same article that

A is making or B or C or under conditions that are similar, I
1101 must assume that they know what my raw materials cost me, that they know what all the expenses must be of bringing out my product, and they therefore have knowledge that they are entitled to, and there can be no objection to giving that knowledge to the world. But the very moment you go into an article that is of a personal nature, it seems to me that another principle is involved.

Now, I need not stop to cite cases to this tribunal about the policy of protecting an owner in respect of manufacturing processes, trade secrets or no matter what you call them. You know that that has been one of the branches of chancery practice for an indefinite time. Courts will not expose the business, the personal matters of business, in investigations unless it is absolutely necessary. Observe, now, I do not argue that if it become essential to the investigation that a court will stop. I do not claim that. No one need to answer me on that. I only allude to it to show that courts will not do so unless some good is to come from it. Now, what good can come here so far as these defendants are concerned? I cannot conceive of any. It is a case where they cannot receive any good. We may receive injury. Is not that another reason, may it please your honors, why you should refuse to compel us to go into these matters?
1102 How far would you go? What would be the stopping place? Are we to tell the different quantities of the articles that we use? The different raw materials and things of that sort? It was like a question that was raised the other day and your honors said you would not require it of Mr. Macdonald until you saw some necessity for it, or require it of complainant and that was to compel us to say how much of our output is Banjo, how much is Lenox and how much Mottled German, or the like. That is obviously a thing one manufacturer would not reveal to another. I need not bring proof of such a thing as that. They would not do so voluntarily. I would concede though that if it became essential to the solution of the problem we present to you, you would be right in compelling us to give it, but until that time would come, you naturally would not do so. This is a tribunal to work out questions of great public interest under an act of Congress passed for that purpose, to give the shippers protection. Yet, is it possible that the railroad companies could make it so burdensome as to compel the shippers to reveal all of their trade secrets as the price of ever getting protection or relief under the Act of Congress. Why, that would be to convert that act into an engine of injury, if not destruction. It would work its own end. These shippers surely can gain relief without going
1103 to that extent. Whenever the rule meets with its exception, you will administer the exception. I admit it, and you ought to. But this is not that case. You might as well say that they could go into the glycerine department — that they could go into the candle department. You might as well say that. How would it help? Take any manufacturing business conceivable. Are we not to know that when they have different departments, working in different articles that those will all be reflected in the profit and loss account, so far as the individual owner is concerned. He could not

keep the corps of bookkeepers to record each transaction, with a separate cash account for each department and a separate profit and loss account, and balance sheets and all that. It would make his business so expensive that another competitor would get the advantage right in that line, if in no other. And what purpose would it subserve? Now, observe that Mr. Procter told Mr. Maxwell as plainly as Mr. Maxwell told the things employed in his argument that they did keep books, which enabled them to know for their own purposes what each department was doing. They had to do that for the purpose of seeing what that department was accom-
1104 plishing. But in their general books, where they would come to cast up profit and loss, where they would take a balance sheet every period, now and then, to see what they were doing, why that would be a convenience and economy that would be obvious to any one. Now, the fact that they do that, the fact that they keep these general books and run their soap department into them ultimately as one thing does not militate against the rule I am contending for, that we are entitled to relief as to any one of our departments or as to any part of any one of our departments if we show you upon facts that the soap of our plant is being prejudiced or otherwise interfered with contrary to the provisions of the Interstate Commerce Act.

If counsel wishes to interrogate Mr. Procter to see whether or not the profits that he has stated in respect of competitive soaps are right, let him cross examine on that line. I admit that the cross examiner's field is large. I admit the policy of keeping it large, but there are bounds to even that; and simply because he can find one set of books that will describe the profit and loss generally does not entitle him to violate some other rules and compel a manufacturer to submit his business secrets to the world or else go out of court.

If the court please, I have taken a good deal of your time
1105 I ask a careful consideration of this feature of the case, and I come back every time, as the mind naturally will recur to it what good is it going to do if you exact it.

Com'r CLEMENTS: If the classification you ask for brings soap all into one class, from 6th to 5th, would it not bring Ivory down too?

Mr. WARRINGTON: I will admit that for the sake of the argument, if the court please. But it seems to me that I have said that which would be a fair answer to it. Let me see if it would not. The profits on Ivory cannot help this classification anywhere any time. Now, I may allude to one thing that will aid that feature of it: We are told what the total volume of the soap trade is and the relation of Ivory is as 2 per cent. is to 100. Can it be that an article of a proprietary character—and I have described what I mean by a proprietary character—that bears such an insignificant ratio to the whole volume of a representative trade—can it be that that would change the rule that should be adopted by the common carriers in any classification? So far as the soap business is concerned, there is not a bit of evidence that has been adduced, and while I am not a prophet, I ven-
1106 ture the assertion that none will be produced, that will be a parallel with this. It stands alone. Now, in the way it has

been described, are you going to say that because it would go down with the other that it shall expose its secrets for the purpose of determining whether the other 98 per cent. was going down or 90 per cent.? There may be some toilet soaps here that would take a different course from that I indicated a minute ago. They are a very small proportion of the whole trade, however, and the very fact that the railroad companies would group all these different classes into one group or one category shows that they regard these soaps—for instance, the Ivory and the toilet soaps—as not worth considering in connection with the total volume of trade.

In the window shade case, to which I alluded a while ago, and from which I read, you will remember what happened. I believe none of your honors were on the bench when that order was made. I am not sure of that however, perhaps you were. When that order was made and then was carried to the court for enforcement, the court declined to enforce it because there was a $3.00 a dozen class of shades that was classed with shades that were $10.00 a pair, and they said they would not make the man pay as much for the
1107 $3.00 per dozen for the same service that they would the other one who had the $10 per pair shades. Well, now, if it has any bearing upon the question here, it seems to me that it tends to differentiate Ivory from this so as to establish and intensify the irrelevancy of the profits on Ivory to this one thing. The vice of the argument on the other side must be tested by this, if there be any error in their argument, and of course that is a question of debate, and I do not wish to assume it. It results logically in making this a personal case and giving the Interstate Commerce Act a personal application. It is to see whether Procter & Gamble is a prosperous concern. It is to see whether it makes money, not on competitive soaps—those which it is complaining about—but on non-competitive soaps. That argument will not do, I submit to you.

Mr. COLSTON: If your honors please, I will not detain you many minutes with what observations——

The CHAIRMAN: We will dispense with any suggestion on your part, Mr. Colston. Mr. Warrington, we have given some consideration to this question and are constrained to overrule your objection. The complaint in this case is of an unreasonable rate on soap resulting from a wrong classification of that article. Now, it
1108 appears that the complainant also makes in the same plant, conducted under the same general administration, and as a part of its entire business, candles, glycerine and some other articles. Now, it would be no answer to the charge you bring here for the carriers to show that Procter & Gamble make large profits in the manufacture of candles, glycerine or oils, or other parts of their business, and therefore, broadly speaking, are perfectly able to pay the rate on soap. But it seems to me no such difference can be made in this case between Ivory soaps and other soaps on the question presented as is made between candles, glycerine and the rest of their business. It appears from what has been already shown, that with respect to the materials out of which it is made, the process of manufacture, the methods of wrapping and packing the boxes and shipping, and, to a

certain extent at least, the purposes for which it is used, this Ivory soap is essentially a laundry soap. It is true that by reason of a fortunate compounding of ingredients, or otherwise, it appears to have been originally a laundry soap of very superior merit and so came to be used to some extent for toilet and other domestic pur-
1109 poses as well as for laundry purposes. It has been very extensively advertised and for that reason has acquired some characteristics of a proprietary article. Nevertheless, it seems to us that that branch of their business can not for the purposes of this inquiry be so effectually separated from the balance of their soap business as to limit our investigation and the basis upon which we should make some order in this case to that part of their soap business which you describe as competitive. It has been suggested that even if that were not true, as a general proposition—a general proposition applied to this case—and as within the scope of the issues raised by the pleadings, that you have in a sense invited the inquiry by lines of proof offered on your part. As for example, you have given evidence tending to show that the carriage of soap is a very profitable business in comparison with what they get on other articles, and the average they receive for the traffic generally, and you have made the present question a little more embarrassing perhaps, or you intensify the embarrassment, by yourself showing what the profits were last year on what you call the competitive articles; whereas the question asked by Mr. Maxwell was what the profits were last year on
1110 the soap business, which did not involve any separation.

Now, it is a very common thing for the Commission in considering questions of this kind where the rates on a given article, although manufactured into different grades, adapted to somewhat different purposes, are under consideration, to take into account the profitableness or otherwise of conducting that business, and surely nothing is said in the window shade case, with which at least three of the members of the Commission are familiar, which was intended to lay down a different view or which establishes any different view. The question there was what should be the classification of the article produced by that complainant as compared with the unmanufactured cloth, and the inquiry therefor- involved the relation of rates as between the cloth and the manufactured article, and went into an investigation of the places where those articles were manufactured and the effect of the rates upon the ability to manufacture the article at the place where complainant carried on business, when his market was very far removed from there. It seems to us legitimate when the rate on an article is challenged, to show whether persons who are interested in that traffic and have occasion to ship that article are, in a general way, engaged in a prosperous business
1111 or otherwise, and I do not recall any case where we have refused to take that into account. It seems as though it were fairly within the scope of the question involved, which is whether this charge is a reasonable one or not.

Now, while it is true, as you say, that this article, although, as it seems to us, competitive with other high grade laundry soap, has nevertheless acquired such reputation as to have some of the charac-

teristics of a proprietary article and therefore introduces into this case an element that is individual in a sense, still it must be borne in mind that the only manufacturers of soap complaining to the Commission of the rates on soap are the complainants in this case; and when they challenge the rates that result from the present classification of soap and in a general way insist that it is oppressive to that industry, why, it seems to me that it is not unsuitable to determine whether their soap business is a fairly prosperous one or not. Of course, we dislike to compel business men to expose the secrets of their business which they would prefer to keep from the public, and would prefer that such disclosure should not in a case like this be required,
1112 but when the inquiry has been invited, as it has been by the complaint and proofs in this case, and when the fact appears to us a relevant one, we cannot exclude the evidence merely out of consideration for the feelings of the interests of the complainant.

We must hold, Mr. Warrington, that if this question is pressed, Mr. Procter can not be excused from answering it.

Mr. WARRINGTON: Well, your honors will allow me to make a formal objection and reserve exceptions. I have not stated any objections, but I think I will simply do so.

The CHAIRMAN: Very well.

WILLIAM COOPER PROCTER resumed the stand.

Mr. MAXWELL: (addressing stenographer) Will you please repeat the question.

The stenographer read as follows:

"Mr. MAXWELL: Then, at the end of the year you know what the profits of your soap department are?

"Mr. PROCTER: Yes sir.

"Mr. MAXWELL: Will you please tell us what they were for the year 1899?"

Mr. PROCTER: $642,000. I want to modify that to this extent—no, it is correct as I stated it.

1113 Mr. MAXWELL: What, if anything, ought to be said to qualify or affect in any way the answer?

Mr. PROCTER: Nothing.

Mr. MAXWELL: Well, what was it that occurred to you?

Mr. PROCTER: It occurred to me whether the question of interest should have entered in. We have a bonded indebtedness upon our property and in that $642,000 is included the proportion of the bonded indebtedness in the soap business. I mean, assuming that the soap business proportion of the bonded indebtedness—interest on the bonded indebtedness was $110,000, that would have to be deducted from it. Probably that would be the better statement. We figure our profits on gross profit and not on net.

Mr. MAXWELL: What is the $642,000.

Mr. PROCTER: That is our profit in the soap business before deducting the interest upon our bonds.

The CHAIRMAN: That is, in making up your profit and loss account, you do not charge the interest on your bonds as an expense?

Mr. PROCTER: As an expense.

The CHAIRMAN: And therefore your suggestion is that a proper share of the interest on those bonds should be charged as against this $642,000?

1114 Mr. PROCTER: Yes sir.

The CHAIRMAN: And that proportion you estimate at $110,000.

Mr. PROCTER: I said that I supposed the proper proportion would be between 100 and 105?

Mr. MAXWELL: Have you redeemed any of those bonds or taken them up?

Mr. PROCTER: No, we have not.

Mr. MAXWELL: Does the company own any of them?

Mr. PROCTER: Yes sir; and in their profit is credited the interest upon them.

Mr. MAXWELL: In what profit?

Mr. PROCTER: The 642.

Mr. MAXWELL: How does that come in as a credit to the profit of the soap account?

Mr. PROCTER: I really do not know why I should put that in and I expect I am wrong on it? It is not. It is credited against our investment account. I was wrong there.

Mr. MAXWELL: Is this the profit on the soap account for the entire year?

Mr. PROCTER: Yes.

Mr. MAXWELL: Now, you spoke of the interest on these bonds? You say the company owns some of the bonds?

1115 Mr. PROCTER: Yes sir.

Mr. MAXWELL: Has it acquired those bonds out of earnings?

Mr. PROCTER: Yes.

Mr. MAXWELL: How many?

Mr. WARRINGTON: Now, your honor, are we to go into that also? There are earning and earnings and is counsel to go on and go into other departments to see what they pay and anything of that kind? I do not see that it is relevant to this case. Of course, you can take us step by step into everything.

Mr. MAXWELL: The suggestion was made your honors, that there ought to be a charge on account of interest on an out standing bonded debt, and it appears that instead of there being an outstanding bonded debt that was $2,000,000 the interest on which would — $120,000, the suggestion of Mr. Procter is that there ought to be something taken off of that. If I can show that the company instead of having an outstanding bonded debt has out of its earnings taken up the bonded debt, so that there is no charge on that, I think I should be entitled to do that.

1116 Mr. PROCTER: I can explain that, I think. If we charge a proportionate amount against the soap business of $642,000 and if as a matter of fact our earnings in excess of our dividends have been incurred from something entirely outside of the soap business, I do not understand that that is a charge against the soap business on those bonds.

Mr. MAXWELL: Then you withdraw that suggestion?

The CHAIRMAN: Mr. Procter means that if they have made some money in candles or glycerine, out of which they have retired some of their bonds, that ought not to affect their right to charge as against the soap business a proper proportion of the whole original issue. That is your point, is it not?

Mr. PROCTER: Yes sir.

Mr. MAXWELL: If the suggestion is that the money has been earned to take up these bonds out of the candle or glycerine business, we will have to inquire about that. I understand that this soap account, profit and loss account, was made up by charging that account—in the first place crediting the account with all the sales of the year and then taking an inventory, and then charging the expenses of that account which include every item of expense, includ-

1117 ing a proportion of the general expenses of the company. Now, the company did not have any expense with reference to this interest during last year. It did not have any expense with reference to that interest if the company had already taken up those bonds and they were redeemed. There was no expense in the soap business on account of the interest to be paid on a bonded debt. This is something that took place before last year, the redemption of these bonds. That is what I am inquiring about.

Mr. WARRINGTON: Now, I cannot help being reminded that we are told about Satan getting his nose into the crack of the door, he will soon get his body through. Let us see about these bonds. There is no reason for saying that all of these bonds were ever owned by the company. If they were bought by the glycerine department or the candle department, or both, and those departments have paid to the soap department all that they owe, does it reflect any upon the profit bearing qualities of the soap department now to ascertain what was done in respect of the bonds in the way I have described.

The CHAIRMAN: Perhaps Mr. Procter will permit me to

1118 ask this question as suggested by the remark he made. You said something which indicated that if any bonds had been purchased by the company, they had not been cancelled, but as a matter of bookkeeping the company continued to pay interest on the bonds and charged that interest as part of its earnings?

Mr. PROCTER: Yes sir.

The CHAIRMAN: So that as a matter of bookkeeping then, you have had receipts from that source?

Mr. PROCTER: Yes sir.

The CHAIRMAN: Now, have those receipts been apportioned a part to the soap department as well as the other departments.

Mr. PROCTER: No, not at all. The receipts are kept separate as I stated. Those receipts were kept in our investment account. We kept an account of those bonds—I do not know whether the investment account is the title on the books—I mean the securities we have had which we did not retire. We have to have that in some kind of form. It is security. We have a surplus in the business and a part of the surplus is invested in that way.

Mr. MAXWELL: Let me put another question to the witness.
1119 You have a bond account or an account that represents these bonds of the company which the company has purchased?

Mr. PROCTER: Yes.

Mr. MAXWELL: Do you credit that bond account the interest that accrues on such of the bonds as the company has taken up and own?

Mr. PROCTER: No, I suppose they are charged to the credit of our interest account.

Mr. MAXWELL: You credit it to the interest account?

Mr. PROCTER: Probably.

Mr. MAXWELL: You think so.

Mr. PROCTER: I see the point you are trying to make. You misunderstand me,——

Mr. MAXWELL: Do not bother about the point I am trying to make. I do not want to argue the case but to ascertain pertinent facts.

The CHAIRMAN: You should permit Mr. Procter to explain.

Mr. MAXWELL: If it is an explanation, certainly.

Mr. PROCTER: I think that I will have to go back and state that we have carried this thing through the interest account, but we do not charge our bonded indebtedness against the interest account; that goes to the profit and loss account and afterwards the
1120 interest on the bonds is charged on our profit and loss account. That is what I mean.

Mr. MAXWELL: Now, the interest that comes to the company on account of the bonds it has taken up is credited to the interest account, is it?

Mr. PROCTER: Yes.

Mr. MAXWELL: And the interest which the company pays out on account of all the bonds is charged to the interest account?

Mr. PROCTER: No, it is not.

Mr. MAXWELL: What is it charged to?

Mr. PROCTER: It is charged to the profit and loss account.

Mr. MAXWELL: The interest on $120,000 in bonds?

Mr. PROCTER: Charged to the profit and loss account.

Mr. MAXWELL: And what is it credited to?

Mr. PROCTER: I do not know what the account is called, but I know that is the fact,—the statements were shown to me with the entire profit and interest—that the interest on the bonds are taken off, deducted from the profit, as shown me.

1121 Mr. MAXWELL: The whole $120,000 per annum is deducted from the profit and loss account?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: You do not know what account that $120,000 is credited to?

Mr. PROCTER: No, I do not.

Mr. MAXWELL: But the interest account is credited with the interest accruing on account of such of the bonds as the company has taken up?

Mr. PROCTER: I think that is probably the fact.

Mr. MAXWELL: Now, how is that interest account closed out at the end of the year?

Mr. PROCTER: It goes into profit and loss, tends to swell our profit and loss account.

Mr. MAXWELL: In other words, it off-sets to that extent the amount of $120,000 you charge to profit and loss?

Mr. PROCTER: Yes, sir; $120,000 comes off our profit and loss account.

Mr. MAXWELL: And whatever the interest is on the bonds you own, goes into it as credit?

Mr. PROCTER: Yes.

1122 Mr. MAXWELL: So that the net charge of your profit and loss account on the interest on the bonds is the difference between the interest on $120,000 and the interest accruing on the bonds that the company owns?

Mr. PROCTER: Yes. The difference is this, that interest account would tend to swell our apparent profit and loss account to that extent. If you are going to charge it off in one instance, you have got to charge it off in the other and it would have the effect of decreasing——

Mr. MAXWELL: It has the effect of decreasing to the amount you do not pay any interest on——

Mr. PROCTER: No, it does not decrease the profit and loss to that extent. If I do not make myself clear, I am quite sure of the fact that the profit and loss account shows with all interest added in. The details of the bookkeeping, I confess I am not familiar with.

Mr. MAXWELL: Take a concrete case. The profit and loss account is charged on account of the interest on $2,000,000 of bonds, $125,000 per annum, is it not?

Mr. PROCTER: Yes.

Mr. MAXWELL: The profit and loss account is credited with the interest on all the bonds the company owns?

1123 Mr. PROCTER: Yes, and whatever other interest we have.

Mr. MAXWELL: But it is credited with that interest?

Mr. PROCTER: Yes.

Mr. MAXWELL: What I want to know is how much is credited on that account?

Mr. PROCTER: All of it.

Mr. MAXWELL: You do not own all the bonds?

Mr. PROCTER: All the bonds we have.

Mr. MAXWELL: That is what I want to know, the amount?

Mr. WARRINGTON: That brings us back to the question that is pending.

The CHAIRMAN: Your question seems to us to come to this: It appears from the statement of witness that they have retired some of the bonds from the earnings out of their business and you are practically asking how much?

Mr. MAXWELL: I am asking what is the charge to interest account.

The CHAIRMAN: It comes to the question of how much of those bonds they have retired out of that business.

Mr. MAXWELL: The purpose is to ascertain the charge last year interest account.

1124 Mr. COLSTON: The witness seems to have left your honors in some doubt as to whether this $642,000 is entitled to any further deduction. The question is whether it is or is not.

The CHAIRMAN: I understood the witness to claim that it was entitled to substantially——

Mr. MAXWELL: He says it was. Now, assuming it is, I want to know how much?

Mr. WARRINGTON: Well, our objection is pending, as I understand.

The CHAIRMAN: We think the question is legitimate.

Mr. PROCTER: Well, Mr. Maxwell stated that he wished to know how much was charged on account of interest.

The CHAIRMAN: It appears from your statement, as I understand it, that you charge to your profit and loss account $120,000 as interest on $2,000,000 and credit it with so much bonds as the company owns.

Mr. PROCTER: Yes, sir. The point I want to get at is this, if I give him the amount of the interest charge, will that be satisfactory rather than the other, because we have other sources which go into our interest account.

The CHAIRMAN: Certainly; he is asking you only for the
1125 amount of interest credited in that account, being interest on bonds owned by the company.

Com'r CLEMENTS: He wishes to know how much you reduce that $642,000 which you say ought to be reduced—how much ought to come off.

Mr. PROCTER: If that is the object—is that what your honors want?

The CHAIRMAN: That appears to be what Mr. Maxwell wants and we are constrained to hold that he is entitled to it as the case now stands.

Mr. PROCTER: Is that what you want, Mr. Maxwell?

Mr. MAXWELL: Suppose you answer this question——

Mr. PROCTER: Suppose I ask your honors if I am to be compelled to go beyond that statement.

The CHAIRMAN: Well, we cannot anticipate what Mr. Maxwell will ask next, but it does not seem to us needful to pursue this inquiry into detail, but approximately what deduction should be made, if any, from the $642,000 of admitted profits on the soap business?

Mr. PROCTER: About $50,000—a little over $50,000.

Mr. MAXWELL: What is $50,000?

1126 Mr. PROCTER: The deduction from that charge.

Mr. MAXWELL: From what charge?

Mr. PROCTER: From $642,000.

The CHAIRMAN: Do you mean by that that having in view the amount of bonds which are still outstanding and the distribution of the interest on those outstanding bonds as between the different branches of your business that $642,000 ought to be diminished by about $50,000?

Mr. PROCTER: Yes, sir; I stated the reason that ought to be done.

The CHAIRMAN: Is it necessary to go beyond that, Mr. Maxwell.

Mr. MAXWELL: I think it is. I am sorry to embarrass Mr. Procter with these questions.

Mr. WARRINGTON: Your honors——

Mr. MAXWELL: Well, I am not sorry any further.

Mr. WARRINGTON: I did not think you were sorry when you said it.

The CHAIRMAN: Let us see what the next question is.

Mr. MAXWELL: How do you arrive at that figure, $50,000?

Mr. PROCTER: That is the amount proper to be charged against the soap factory.

1127 Mr. MAXWELL: You said that before. I would like to know how you arrive at it.

Mr. PROCTER: The proper way would be the proportionate amount.

Mr. MAXWELL: Please give me your figures, how you arrive at $50,000?

Mr. WARRINGTON: Your honors we object. It is just as certain as night follows day that this is going to lead into other departments which certainly ought not to be opened up.

Mr. MAXWELL: If your honors please, the court has already decided, upon grounds which have been stated, that we are entitled to know what the profits of the soap business are, and the court is entitled to know in determining the issues before it. Now, Mr. Procter has given us first a statement of the profits. Then he hesitated and did not know but what that ought to be qualified in some way. Then he undertakes to qualify it and says there is 105 to come off. Now, he tells us there is only 50 to come off, and he proposes to stop there and not to give us any figures, not to let us know whether there is 50 to come off or whether there is anything to come off, not

1128 to disclose to us any process by which he arrives at 50. Are we to accept his statement reduced from 105 to 50, which involves his conclusion as to what ought to come off, a matter of law as well as a matter of fact? Cannot we ask him how he arrives at that conclusion? It is perfectly clear, if your honors please, that there is not a cent to come off. How are the profits of the business to be ascertained? I propose to ask him next whether the interest account does not on the balance show a large credit balance and not a cent to debit. How can the cost of the soap business, the profits of the soap business, which are disclosed by the method which has been presented, which is a scientific, correct and accurate method of ascertaining the profits of a business, established by the usage of bookkeepers from time immemorial, and resting on a simple, solid, scientific principle be affected by a term he proposes to introduce. It does not have any actual relation to any actual expense of any sort that is borne by the soap department. If there is an actual expense that is borne that is to come out of those profits, let us know what it is. Let us know how he gets at $50,000 and not stop at his statement that it is $50,000, and I decline to tell any process of how we arrive at that amount.

1129 Mr. COLSTON: Let me make a suggestion. Your honors will recall what led up to this. Witness first said after the ruling that the profits were $342,000. Then he started to make

another statement. His first utterance was, if I remember correctly, and I started to write it on my notes, that there was a modification. Then he hesitated and said no, there was not. Then, Mr. Maxwell asked, what was it you had in mind when you stated that there was a modification of this statement of profits, and under that the witness stated what he now appears to urge as a modification, in regard to which he was in so much doubt at first, of a further deduction which tends to reducing the profits of this business. Well, now, it does seem to me, if your honors please, it is perfectly obvious that, while I am not meaning to say that Mr. Procter is not conscientious in what he puts forward in his mind now as a proper deduction, yet we are not bound by that—we have had some instances of the error of their mental operations before in this case that ought to entitle us to test these matters by cross examination. We had Mr. Macdonald tell us yesterday that

67 or 65 per cent. of the business was a certain soap, Lenox,
1130 then under the test of cross examination he put another soap at 7 and another at 7 and another at 7 and it kept climbing up. After adjournment he comes back with new light and says he has not the information to make any statement that will be reliable, on which the Commission can act. Why have not we the right to apply the crucial test of cross examination. There is no desire I am sure on my part, and I do not think Mr. Maxwell means to pry into the private business of this concern at all. My friend tries to deter by holding up to you a bad example. He says, let Satan get his nose in the door and he will soon get his whole body in. If there is any Satan in the case, we did not introduce him here.

Mr. WARRINGTON: You did not bring him?

Mr. COLSTON: No, we did not bring him. Now, I simply desire to say this in support of Mr. Maxwell's claim, not that what he says needs any support, but I do not want this whole burden to be on one counsel; but I say that Mr. Procter ought not to be permitted now to make a deduction which apparently rests in a middle process without our ability to get at it. You might as well deduct one hundred or two hundred thousand dollars and say that

ought to come off, and there tie our hands.

1131 Mr. WARRINGTON: So far as I am personally concerned—of course I am only counsel—I would be perfectly free to just strike it out and not take any advantage of it at all. Let the profit stand at that, for if profits are to determine whether or not railroad companies comply with the law or not——

The CHAIRMAN: Not at all to determine. The question is whether it is a proper fact to be taken into account. It is by no means controlling. It may have very little weight in a given case.

Mr. WARRINGTON: I am only arguing the way it appears to me.

The CHAIRMAN: Well, pardon me, it does not seem to me that Mr. Procter has been in any way uncandid about this matter at all.

Mr. WARRINGTON: No, if you knew the man you would not think so.

The CHAIRMAN: I understood Mr. Procter to say that $642,000

is the gross profit without charging anything as interest on these bonds. I can only infer from the testimony that if the company own all those bonds about $105,000 of $120,000 of interest they paid ought to be charged against the soap account. Thinking that
1132 I would bring the matter to the substantial fact, I asked him what amount had to be deducted, having reference to the bonds still outstanding, and estimating that he would divide this in the same proportion as the whole $120,000, and he said $50,000 had to come off. That would indicate that half their bonds had been retired. That is the only inference that can be drawn from it.

Mr. WARRINGTON: Anybody can see what it means. If they owned all the bonds, that is one thing, and if they own them I can see how the question would arise in a man's mind as to how he would treat the part they owned and that was the occasion of the hesitancy, and counsel are merely unduly suspicious. It may not be unnatural.

The CHAIRMAN: I am only suggesting now that it seems we have got near enough to the actual fact for all practical purposes of this case, but if counsel for the defendants think otherwise they are entitled to ascertain how Mr. Procter arrives at the conclusion that $50,000 should be deducted. But it must be apparent that a matter of a few thousand dollars one way or the other can have but a shadow of a bearing on any question in this case. Whether the profits are a few thousand dollars more or less certainly
1133 cannot weigh a hairsbreadth in this case, the percentage is so small.

Mr. MAXWELL: A difference of $50,000 will amount to more than the increase of the classification.

The CHAIRMAN: If you have reason to doubt that $50,000 is more than should be deducted——

Mr. MAXWELL: I want to know what his process is.

Mr. PROCTER: We retired just about half our bonds. I do not know the exact number. When I say "retired" I mean we bought them.

Mr. MAXWELL: You have told us about improvements made. Were there any improvements made in the soap department of the business.

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: I believe you said they had been trebled?

Mr. PROCTER: I said the capacity had been practically trebled.

Mr. MAXWELL: Was that by the erection of new buildings?

Mr. PROCTER: Practically, yes, sir; not entirely by the erection of new buildings.

Mr. MAXWELL: Machinery?

Mr. PROCTER: No, I can explain if you wish me to in detail.

1134 Mr. MAXWELL: I do not think it is important to go into detail.

Mr. PROCTER: It is due to economy of space. That is largely what our increased capacity is due to.

Mr. MAXWELL: What were those improvements charged to?

Mr. PROCTER: Some of them where it was a question of renewal

or modification of a building, a great deal has been charged as expenses; where it is a permanent improvement it has increased our capital account.

Mr. MAXWELL: Were those paid for out of earnings?

Mr. PROCTER: Earnings of the soap business? No.

Mr. MAXWELL: Did you borrow any money for it?

Mr. PROCTER: The Procter & Gamble Company borrowed no money.

Mr. MAXWELL: Did you issue any stock?

Mr. PROCTER: No, sir.

Mr. MAXWELL: Then those improvements were paid for out of earnings.

Mr. PROCTER: Not out of earnings of the soap business.

Mr. MAXWELL: Were they paid for out of the treasury of the Procter & Gamble Company?

Mr. WARRINGTON: I object to that as being immaterial.

1135 Mr. MAXWELL: If your Honors please I will show in a few minutes the importance of this. The relevancy and importance of it is a subject with which I am very familiar and it will certainly appear that Mr. Procter is in error in the assumption he has just made in his answer to the Commission.

The CHAIRMAN: The precise question now is whether the expenses of those improvements were paid out of the treasury of the Procter & Gamble Company?

Mr. MAXWELL: Yes, sir.

The CHAIRMAN: I think he may answer that.

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Now, what do you mean—you say that they were charged either to expense account or to construction account.

Mr. PROCTER: Yes, sir.

The CHAIRMAN: "Capital account" was the term used before.

Mr. PROCTER: I mean it increased our assets.

Mr. MAXWELL: Do you keep a building account?

Mr. PROCTER: We keep a plant account.

Mr. MAXWELL: So far as it was additions you charged to plant account?

Mr. PROCTER: Yes, sir.

1136 Mr. MAXWELL: Do you keep a soap plant account?

Mr. PROCTER: No, it is not separate.

Mr. MAXWELL: Just a general plant account.

Mr. PROCTER: Yes. I will have to modify that also. In 1890 when the business was started, the business was appraised as a whole. Since that time we have allotted in our books these various items as nearly as we could proportion to the value of appraisement. All additions have been charged to the soap factory account or the various accounts at that time. They go in the city office into the general plant account. They are separated there, but not in our general books.

Mr. MAXWELL: Are they charged on the general books elsewhere than at Cincinnati?

Mr. PROCTER: Yes, sir; they are separated in our factory accounts.

Mr. MAXWELL: Then, it is the general result of the factory account carried into the factory books.

Mr. PROCTER: The general result is carried there, yes, sir.

Mr. MAXWELL: To what charge or what account were these matters that were made in the soap plant charged?

1137 Mr. PROCTER: They increased the soap factory plant and would appear in the general plant account in the city office.

Mr. MAXWELL: Is there an account at the factory called the "soap factory account"?

Mr. PROCTER: No, there is not. I really do not know what the account is called, but they have a building account with each separate building. That is carried through their ledgers and into this general account. What the name is I do not know.

Mr. MAXWELL: Then, was it charged to the building account?

Mr. PROCTER: It was credited in these separate accounts, No. 1 "Framing House," No. 2, or whatever it might be.

Mr. MAXWELL: What was it charged to?

Mr. PROCTER: In effect to the general plant account.

Mr. MAXWELL: I want to ascertain how it was charged at the factory.

Mr. PROCTER: Are you figuring on expense?

Mr. MAXWELL: Yes, sir.

Mr. PROCTER: Well, either soap account, glycerine account or candle account.

1138 Mr. MAXWELL: I do not care about the proportion you charge to the expense account, but I want to see what the portion that you did not charge to the expense account was charged to.

Mr. PROCTER: They would be charged on the factory books to the building account for which the improvement was made.

Mr. MAXWELL: And would be transferred to the general books that way?

Mr. PROCTER: No, they would be transferred to the general plant account.

Mr. MAXWELL: To the general plant account?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: And no charge in that connection made to the expense account at all?

Mr. PROCTER: Not for permanent improvements. We would estimate the value of the permanent improvements and that would go in, but there would be no charge after that.

Mr. MAXWELL: I did not quite understand your reference to the appraisement made when the company was organized. What did that have to do with this account?

Mr. PROCTER: When the company was appraised, it was appraised as one business; and it was appraised—I have forgotten the

1139 exact figures—cash, so much; car assets, so much; utensils, so much; and plant, so much. The plant was appraised as a whole, the buildings, realty, and everything of the sort. When our books were opened, they were opened by a set of chartered accountants and they made the entry in this form. It was quite hard at first to estimate exactly how you should change your values or divide and also on account of the fact—no, I am mistaken about

that—plant and good will is all in that account; so we could not separate there either account that way, so we separated the buildings at the factories according to their values and have carried them through.

Mr. MAXWELL: Now, the appraised value fell very far short of the capitalization.

Mr. WARRINGTON: I object to that. What has that to do with it?

Mr. MAXWELL: It has to do about the keeping of this account.

Mr. WARRINGTON: I do not see how that tells anything about the keeping of the account.

Mr. MAXWELL: If you will let me alone a few minutes I will show you.

Mr. WARRINGTON: I don't think that you will. Your
1140 Honors, are we making any progress in this case? I do not like to be making objections. I know how annoying it is to a busy tribunal, as this one is, but is there not a limit? How one can tell the relevancy of this appraisement to the capitalization in 1890 is beyond my ken.

Mr. MAXWELL: It has this relation: When these books were opened they had to credit their bond account at $2,000,000, because that represented a liability. Then they had to credit the stock account with $4,500,000, and it is a fundamental principle in book-keeping that every credit must have a corresponding debit of precisely the same amount. Now, I want to know what the debit of the $6,500,000 was, only for the purpose of ascertaining from Mr. Procter the character of the charges that were made on account of these improvements. If we had the books the whole thing could be made very plain in two or three minutes.

Mr. WARRINGTON: If you had the books, my objection to it is that it is an unnecessary consumption of time. I am not unaware at this time that your Honors are going to require whatever is necessary. I am appealing to your discretion. Have we not gone far enough?

The CHAIRMAN: From what has developed so far, it would seem to me that the general fact of importance is to know whether this has been a very prosperous business or otherwise, and that fact
1141 already appears. But when we hold, as we feel constrained to do, that they had a right to know whether this was a profitable business and the extent to which it was profitable, it logically follows that they may go further if they feel obliged to. Of course, there should be some end to it.

Mr. MAXWELL: I would have ended long ago if our friend Mr. Warrington had not delighted us with his lucid explanations of the law. They are very entertaining.

Mr. WARRINGTON: They are about as clear as your explanation of that book-keeping idea. Why do you not tell the court that you are trying to go over now to some other place? Why do you not say I want to go into the candle department and glycerine department? You may as well come up to it first as last and let's have it fought out.

Mr. MAXWELL: I will ask the stenographer to repeat the question.

The stenographer repeated the question as follows:

"Mr. MAXWELL: Now, the appraised value fell very far short of the capitalization, did it not"?

Mr. PROCTER: The appraised value—I have forgotten—the appraised value was higher than the value that was finally ac-
1142 cepted or published in the prospectus. My recollection—I have not seen those figures for a number of years—my recollection is that the figures as shown in the prospectus show figures like $3,800,000. The appraised value as shown by the appraisers was about four million and three hundred odd thousand dollars. The appraisement—you have not got the figures there in the prospectus—was afterwards reduced for other reasons.

Mr. MAXWELL: Did the appraisement of $4,300,000 that you mention now, did that include good will?

Mr. PROCTER: No.

Mr. MAXWELL: To what account was the difference between $4,300,000 and $6,500,000 charged?

Mr. PROCTER: As I told you, my recollection was that that was included in plant, good will, etc. They were separated—plant, utensils, and so on.

Mr. MAXWELL: Have you made additions to that account so that it stands more than $6,500,000 now, or have you let these improvements go to bringing that entry down to an appraised value?

Mr. PROCTER: We have made no change in that item of good will, if that is what you mean. Is that what you mean?

1143 Mr. MAXWELL: No, I understood that good will was not entered as a separate account. It was just plant and good will $6,500,000.

Mr. PROCTER: Oh! no, the accounts were separated into cash, stock on hand, utensils, and then my recollection is that plant and good will were in one item. That good will account has not been changed. The plant and good will account as one account has been changed to the extent of actual improvements made on the property.

Mr. MAXWELL: It has been increased to that extent?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: In making up the average which follows the capitalization there is cash, stock, utensils, and then plant and good will made up as one item?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: The item of good will remains still in the account?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: But the item of plant has been increased by such expenses for betterment as you regarded as permanent improvements?

Mr. PROCTER: Yes, sir.

1144 Mr. MAXWELL: Now, you said that these bonds which the Company purchased with the earnings of the soap department——

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: How did you distinguish on your books with reference to the purchase of bonds? How were you able to say that they were not purchased out of the earnings of the soap department?

Mr. PROCTER: If they were we did not pay the dividends.

Mr. MAXWELL: What you did was to take the earnings of your entire business and put them in your treasury—you had a common treasury?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: You did not have a treasury for the soap department?

Mr. PROCTER: No.

Mr. MAXWELL: Or any other department?

Mr. PROCTER: No.

Mr. MAXWELL: When you bought bonds in the market you paid for them out of the common treasury?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: And when you paid dividends you paid them out of the common treasury?

1145 Mr. PROCTER: Yes, sir.

Mr. MAXWELL: How then are you able to say you did not buy the bonds out of the earnings of the soap business?

Mr. PROCTER: Because on the earnings of the soap business, we did not have enough earnings—you cannot buy more than the actual amount you have on hand, and we did not make the amount of money in the soap business to pay dividends and buy bonds.

Mr. MAXWELL: Therefore, you did not make enough out of the candle and glycerine business to pay dividends?

Mr. WARRINGTON: Ah! There we are. I told you. All I want you to do is to be frank and come out. If that is what you are going into and the Commission rules on it, we know what to do. You are going squarely there. I object to the question.

The CHAIRMAN: Mr. Warrington, it is clearly within the principle of the ruling already made.

Mr. WARRINGTON: Your Honors will allow us an exception.

The CHAIRMAN: Certainly. Mr. Procter states that they did not generally purchase any of their bonds out of the earnings of the soap business. It is legitimate to inquire why he makes that statement and the ground on which he bases it.

1146 Mr. PROCTER: I base it on the ground that we did not have enough earnings out of the soap business to do it.

Mr. MAXWELL: You ascribe the dividends out of the soap business and the purchase of the bonds out of something else. Is that the idea?

Mr. PROCTER: I did not ascribe all the dividends even to the soap business.

Mr. MAXWELL: You say the earnings of the soap business went to dividends whether they paid them all or not and the earnings of the other business went to bonds.

Mr. PROCTER: You cannot say we paid our dividends and credited a surplus from the soap business any more than you can from

the other. As a matter of fact, proportionate to capital, we did more in the others.

Mr. MAXWELL: I do not want to go into that, unless you want me to go there about the earnings of the other departments. There was no division made at all when you bought bonds or paid dividends, as to whether you were getting them from the earnings of the soap business or any other business?

Mr. PROCTER: No, there was no division.

Mr. MAXWELL: You mean the earnings of the soap business were not sufficient to pay the dividends and also to buy the bonds?

1147 Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Is "White Cloud" soap, made by Kirk, a soap well-known in the market?

Mr. PROCTER: Well, I do not mean to say it is well known—it is well known to the trade.

Mr. MAXWELL: Is that soap of the same general character as Ivory.

Mr. PROCTER: The same general appearance.

Mr. MAXWELL: It is white?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: It floats?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: They claim it is as good as Ivory?

Mr. PROCTER: I believe they do.

Mr. MAXWELL: And they undertake to sell it for the same purposes as Ivory?

Mr. PROCTER: Well, I would not say that.

Mr. MAXWELL: They claim it answers the same purposes, do they not?

Mr. PROCTER: I believe they do.

Mr. MAXWELL: And advertise it?

1148 Mr. PROCTER: I believe they do.

Mr. MAXWELL: Do you know what they charge for it?

Mr. PROCTER: Yes, sir, $4 a box against our $7 a box. Is that competitive?

Mr. MAXWELL: Where do you get $7?

Mr. PROCTER: Their price to the retail trade is $4 and ours is $7.

Mr. MAXWELL: What is it to the jobber, do you know?

Mr. PROCTER: My impression is it is $3.60.

Mr. MAXWELL: Why do you not charge for Ivory soap $7 to the jobber?

Mr. WARRINGTON: Is that material, your Honors?

Mr. MAXWELL: He says it is proprietary. If I had something that did not compete with anything I would not stop at $6.50.

The CHAIRMAN: They must determine that themselves as a matter of business policy, what price multiplied by the sales that price will produce will prove most profitable to them. That would apply if it was strictly a proprietary article covered by a patent right. Presumably they make a price that will give them the largest net results.

1149 Mr. MAXWELL: Is your price fixed at all with reference to the fact that there are other soaps claimed to be as good as Ivory, that undertake to claim that market?

Mr. PROCTER: Not at all.

Mr. MAXWELL: You do not pay any attention to them?

Mr. PROCTER: Not a particle of attention to them.

Mr. MAXWELL: The reason you do not charge $7 instead of $6.50 is not at all on account of there being other soaps?

Mr. PROCTER: Not at all.

Mr. MAXWELL: How is "Fairy" soap?

Mr. PROCTER: It is similar to "White Cloud" in general appearance.

Mr. MAXWELL: "Snowberry"—is that a soap made by Fairbanks?

Mr. PROCTER: I believe Fairbanks has got a "Snowberry" soap.

Mr. MAXWELL: Does Cudahy have a soap he claims to be as good as Ivory?

Mr. PROCTER: I have never seen it.

Mr. MAXWELL: Has Armour?

Mr. PROCTER: Armour has one, yes sir.

1150 Mr. MAXWELL: He claims it is as good as Ivory?

Mr. PROCTER: I do not know whether he does or not. I presume he does.

Mr. MAXWELL: Do you know what that sells for?

Mr. PROCTER: No, I do not.

Mr. MAXWELL: "Wool" soap?

Mr. PROCTER: Swift has that.

Mr. MAXWELL: He claims that is as good as Ivory?

Mr. PROCTER: I presume so.

Mr. MAXWELL: Do you know what that brings?

Mr. PROCTER: No, I do not.

Mr. MAXWELL: But so far as any of these soaps are concerned I understand you to say now that you could raise the price of Ivory soap 50 cents or a dollar or anything you please?

Mr. PROCTER: No, I will not say that.

Mr. MAXWELL: How high could you go?

Mr. PROCTER: I do not know.

Mr. MAXWELL: There might be a difference between the price of Ivory soap and these soaps which would lead the purchasers to take these soaps instead of Ivory soap?

Mr. PROCTER: I do not say that. I said if we did any-
1151 thing to disarrange the standing of Ivory soap, not only with the general trade but with the consumer, even the question of changing its price, it might affect its standing and its competition. We never have changed its price.

Mr. MAXWELL: But the price is not uniform to the consumer at all, is it?

Mr. PROCTER: It has been uniform in the same territory—I mean so far as we are concerned.

Mr. MAXWELL: You do not sell to the consumer at all?

Mr. PROCTER: No, sir.

Mr. MAXWELL: Mr. Macdonald, as I recollect, said that you did

not make any suggestion about the retail prices—there was no restriction—you left every retail dealer to sell as he pleased, and as I recollect the price is not uniform.

Mr. PROCTER: That is possibly so. It is possible there are variations, but the vast bulk of the soap is sold at the same price all over the country.

Mr. MAXWELL: Is that true of all your soaps practically, that they are sold at the same price in the same territory?

The CHAIRMAN: The point seems to be whether you in any way influence or determine the price at which the soap shall be
1152 sold to the consumer ultimately.

Mr. PROCTER: No.

The CHAIRMAN: Each retailer is free to make any price he chooses?

Mr. PROCTER: Yes, sir; they do. Sometimes they sell it at a cent a cake and it costs them 5.

Mr. MAXWELL: Can you account for the fact that the price to the retail purchaser is practically the same in the same territory?

Mr. PROCTER: That is not the question his Honor asked.

Mr. MAXWELL: That is the question I ask. I will request the stenographer to repeat it.

The stenographer repeated the last question.

Mr. PROCTER: Well, that is a portion of our system of selling Ivory soap. We have to let the jobbers know. We request that they maintain a regular price of $4 to the retail trade. We have no written agreement in a great many States. It is merely a matter of understanding. In some States there are.

Mr. MATTHEWS: When you say $4 a box what do you refer to?

Mr. PROCTER: I refer to the small size.

1153 Mr. MAXWELL: Is it true that where you do not have an agreement it is understood that unless they maintain your price they do not get your soap?

Mr. PROCTER: Yes, sir; that is true.

The CHAIRMAN: You are speaking of the prices at which you sell to the wholesaler?

Mr. PROCTER: No, the price at which the wholesaler sells to the retailer.

The CHAIRMAN: You control the price the wholesaler makes to the retail buyers? Is that it?

Mr. PROCTER: Yes, sir; to that extent. We will not if we know it sell to the jobber who is cutting his price to the retail trade.

Mr. MAXWELL: Now, the further question I asked was what explanation you could give of the fact that the price to the consumer was, as I understand you to say, practically the same in the same territory.

Mr. PROCTER: Because the soap at that price, if I add 5 cents a cake for the small size it pays one cent a cake to the retailer; that is a normal profit to him and what he would expect on that soap. He would sell it six for a quarter in extreme cases. They do not
1154 like to sell on that basis. It is simply the general satisfactory profit established at a satisfactory convenient retail price.

Mr. MATTHEWS: What you call a popular price.

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Will you tell us the process by which you got $181,000 from $642,000?

Mr. PROCTER: Yes, sir, I strike $461,000 from it. That $642,000 contained all our soap business.

Mr. MAXWELL: You subtracted $461,000?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: How did you subtract $461,000?

Mr. PROCTER: That is the profit on our Ivory business.

Mr. MAXWELL: How did you know that?

Mr. PROCTER: I deducted the average price of our raw material for the year and estimated the cost of the soap as against our selling price, deducting the advertising—the way we determine the cost price of every article we sell and the way we determine the cost price in managing our business.

Mr. MAXWELL: Do you keep an account of the material you put into Ivory soap?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Where?

Mr. PROCTER: At Ivorydale.

1155 Mr. MAXWELL: Why did you not get it by a similar process by working on Lenox soap and deducting that?

Mr. PROCTER: For several reasons. Ivory being of one class all over the country it is easier to do it. There being no variation of price it is easier. Its being one article, instead of fifteen or sixteen it is easier to do it.

Mr. MAXWELL: I thought the price of Ivory was not the same all over the country.

Mr. PROCTER: Well, it is in the two sections. There are two territories and in those two territories the prices are the same or practically so.

Mr. MAXWELL: In arriving at the amount of material you put in did you take an average or estimate in this Ivory account that you deducted $461,000 on account of?

Mr. PROCTER: I take the average cost for raw material.

The CHAIRMAN: You mean the average cost of raw material in making Ivory soap?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: That is kept by itself.

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Are the materials purchased for making Ivory soap kept by themselves?

1156 Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Is the Ivory soap made in a separate building?

Mr. PROCTER: The soap is made in a separate building, but if you want to know I will tell you that the accounts running through Ivory are not separated in our expense accounts, as in all manufacturing businesses I have been connected with, we take the cost per hundred pounds in making all grades of soap. Ivory is made the

same as the others. It is no more expensive in making. It is the method that determines our prices and how we shall conduct our business.

Mr. MAXWELL: You say you do have a separate account of material that goes into Ivory soap?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: That is the only item you have separate?

Mr. PROCTER: We have them all separate. That is the only item I used.

Mr. MAXWELL: But I mean that was the item that went into this $461,000 that you took separate.

Mr. PROCTER: How do you mean?

Mr. MAXWELL: Tell us that first item. You got $461,000. What was the first item?

1157 Mr. PROCTER: How do you mean—in dollars and cents?

Mr. MAXWELL: Yes, sir.

Mr. PROCTER: It was $461,000.

Mr. MAXWELL: The items you put down to get that $461,000?

The CHAIRMAN: It occurs to me, is it of sufficient consequence to justify further pursuit. Suppose your cross-examination should vary the division as between $181,000 and $641,000, a few thousands, would it be of any consequence?

Mr. MAXWELL: I do not know how it will turn out, but, according to their own statement, it is less than $50,000 that this change of classification amounts to, I do not like to say, because I have not figured it out, but my impression is that it will be nearer a third of that. They say that they cannot stand it. Well, I will not press this question. That is, I do not want to know the figures on raw material, but you did put in figures for raw material.

Mr. PROCTER: I took the average cost of raw material as determined from our accounts. I know the proportions. That is the way we determine all our costs.

Mr. MAXWELL: Was that Ivory soap you made last year?

1158 Mr. PROCTER: Yes. I only took the average out of the soap. It would not have any material *affect* on the soap.

Mr. MAXWELL: Did you take the average prices on the average amounts of material that went into the quantity of Ivory that you made?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Was that more or less than what you sold

Mr. PROCTER: I do not know.

Mr. MAXWELL: Would that be very material?

Mr. PROCTER: No, it would not affect it to the extent—it would not amount to one per cent. on the total.

The CHAIRMAN: The difference on hand at the end of the year would not cut any figure?

Mr. MAXWELL: It would make this difference, because the profit on the $642,000 is only a profit on what is sold; so if you deduct from that the profit from what is made and it is more, it would make a difference. That is the only point. It is not very much. How did you figure on the labor you put in?

Mr. PROCTER: I told you our labor and expense account is figured up each year and each month. I get it every six months. Our labor and all manufacturing expense is figured so much per
1159 hundred pounds, and as I told you Ivory is made the same as other soaps—the same labor, the same day's work—we just simply average that as being our cost per hundred pounds for manufacture.

The CHAIRMAN: It does not cost you more to make that than the others?

Mr. PROCTER: No, sir; not a particle.

Mr. MAXWELL: For instance, if all the other items of cost—labor, insurance, taxes, and other expenses, that go into the general soap account, should amount to, say, $100,000, and the total proportion of Ivory was one-fifth, you would charge one-fifth of that?

Mr. PROCTER: No.

Mr. MAXWELL: Well, how?

Mr. PROCTER: If the total manufacturing expense was $100 and we made——

Mr. MAXWELL: Take 100 pounds.

Mr. PROCTER: Then, the cost would be, say $1.00 per pound. That would be the manufacturing expense. Then, I estimate the average amount of stock used in Ivory at its relative cost.

Mr. MAXWELL: I know about the stock.

1160 Mr. PROCTER: I am going to tell you. Then, add to that the cost of making that into soap. I know the two items, the cost of raw material and the cost of manufacture and I add them together.

Mr. MAXWELL: I do not see what difference there is between what you say and what I ask. All the items except raw material you divide pro rata per pound or per hundred pounds among all the soap. You make a charge for just the same portion of the expense against Ivory soap as you do against Banjo?

Mr. PROCTER: Yes, sir. It is not fair to Banjo. Banjo costs more in expense than Ivory.

Mr. MAXWELL: But that is the way it was done?

Mr. PROCTER: That was the way it was done.

Mr. MAXWELL: What do you mean by "purity" as applied to soap? You said that this soap was pure. What does that signify about the soap?

Mr. PROCTER: The absence of anything that ought not to be in soap, that ought not to be in a chemical soap.

Mr. MAXWELL: And there is a certain standard of things that ought not to be in a soap?

1161 Mr. PROCTER: Speaking chemically, yes sir.

Mr. MAXWELL: That is something that is recognized by chemists or experts that there are certain things that ought not to be in soap?

Mr. PROCTER: A pure soap is a technical term more frequent in Europe than in this country. It is a soap without sal-soda or silicate or any fillers. It is a technical term.

Mr. MAXWELL: But your soaps do contain these fillers?

Mr. PROCTER: All competitive soaps do contain, not these fillers, but these articles of sal-soda and silicate. We do not use fillers.

Mr. MAXWELL: I understood you to say that those were fillers.

Mr. PROCTER: No, I said other articles. Starch, for instance, is a filler and has no detergent effect on the soap. They put in powdered sand and things of that kind.

Mr. MAXWELL: Is sal-soda considered an element that makes soaps impure.

Mr. PROCTER: No, not in the commercial sense. Chemically it would cease to be a pure soap. In Europe it would not be considered a pure soap.

1162 Mr. MAXWELL: I mean the sense in which you advertise it—Ivory, 99.44 per cent. pure.

Mr. PROCTER: No other competitive soap would advertise anything approximating that.

Mr. MAXWELL: What does that mean about Ivory soap? Is that used in a chemical sense?

Mr. PROCTER: Yes, sir; chemically pure.

Mr. MAXWELL: That is, in the European sense?

Mr. PROCTER: No; well, in the chemical sense and also the European sense.

Mr. MAXWELL: Does that mean if sal-soda was in it it would not be pure?

Mr. PROCTER: It would not be chemically pure or would not be pure in the English sense.

Mr. MAXWELL: Would it be pure in the sense of your advertisement?

Mr. PROCTER: No.

Mr. MAXWELL: Ivory does not contain sal-soda?

Mr. PROCTER: No.

Mr. MAXWELL: Or silicate?

Mr. PROCTER: No.

1163 Mr. MAXWELL: Or any filling?

Mr. PROCTER: No.

Mr. MAXWELL: Has there been an improvement or have there been new fillers devised during the last ten years?

Mr. PROCTER: Not to my knowledge.

Mr MAXWELL: Has the price of fillers changed during the past ten years?

Mr. PROCTER: We do not use fillers, I told you.

Mr. MAXWELL: In none of your soap?

Mr. PROCTER: No, we may use it. I think there is a little used in Banjo. I had forgotten that. That is the only one.

Mr. MAXWELL: I thought you spoke of sal-soda and silicate as being a filling?

Mr. PROCTER: I told you a moment ago that I said sal-soda and silicate and other fillers. I meant other articles that were fillers. Sal-soda has a definite chemical action on the soap. We do not consider it and I do not think it is generally considered a filler. We could not send out our marketable soap if we packed it before we put the sal-soda and silicate in. I am speaking of competitive soaps.

1164 Mr. MAXWELL: Would you call those fillers when they go into so-called competitive soaps.

Mr. PROCTER: Yes, sir; I did not understand what you meant by fillers.

Mr. MAXWELL: Has the price of those articles changed in the past ten years?

Mr. PROCTER: Yes, they have during the ten years. They are back again now about as high as they were at the beginning. They have had fluctuations.

Mr. MAXWELL: You made some computation here about the comparative cost of conducting business in various zones. How did you arrive at that?

Mr. PROCTER: They were arrived at under my direction. I had some of our men—I know those things anyhow as a matter of fact—they were arrived at by some of the men under my direction. I went over and supervised the figures.

Mr. MAXWELL: I want to know how you separate the expenses in determining what was the expense of doing business in different zones.

Mr. PROCTER: We take the men that travel in those territories. That is another reason I divide them into states instead
1165 of following it zig zag.

Mr. MAXWELL: What you did was to take the comparative expense of traveling?

Mr. PROCTER: The expense of traveling and selling.

Mr. MAXWELL: The expense of *of* your traveling men in different zones?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: And the proportions you give represent the percentage of traveling expenses in one zone to traveling expenses in another and that was the only item you took?

Mr. PROCTER: No, I took the traveling expense of selling.

Mr. MAXWELL: That was the only item you took—traveling expense of selling?

Mr. PROCTER: And salaries; the expenses of salesmen in those territories.

Mr. MAXWELL: Let us take a concrete case so that we may understand it. Suppose the traveling expenses in zone No. 1 were $10,000 and the traveling expenses in zone No. 3 were $15,000. What proportion would you fix there?

Mr. PROCTER: I would divide the number of boxes in zone No. 1 and take that result and compare the result with the expenses
1166 in No. 3 by the number of boxes, you would have the two results you could compare; No. 1 being 100 and the other whatever you figure out.

Mr. MAXWELL: Did that have anything to do with Ivory soap? Did you include anything about Ivory soap?

Mr. PROCTER: Yes, sir; I think this included Ivory.

Mr. MAXWELL: Where did you put the advertisement of Ivory soap?

Mr. PROCTER: I said those figures did not include any advertisements.

Mr. MAXWELL: Nothing but traveling expenses?
Mr. PROCTER: Traveling expenses and salaries.
Mr. MAXWELL: Are you sure that you included in ascertaining the percentage of traveling expenses to sales, that you included the sales of Ivory soap?
Mr. PROCTER: Yes, sir.
Mr. MAXWELL: And what sales did you include—those that were actually delivered in a territory or orders for which were taken in a territory?
Mr. PROCTER: Those actually delivered in a territory.
Mr. MAXWELL: You are sure of that?
Mr. PROCTER: Yes, sir.
1167 Mr. MAXWELL: You yourself gave the directions to subordinates who made up the figures and reported them to you which you say are the figures of the subordinates?
Mr. PROCTER: Yes, sir.
Mr. MAXWELL: You have not the figures themselves?
Mr. PROCTER: No, I have not.
Mr. MAXWELL: Did you have anything to do with this change of classification in 1895 which you say was never applied to you and which was withdrawn in 15 days?
Mr. PROCTER: No, I had nothing to do with it.
Mr. MAXWELL: Either with making it or having it withdrawn?
Mr. PROCTER: No, I had nothing to do with it personally.
Mr. MAXWELL: You do not know why it was withdrawn?
Mr. PROCTER: No.
Mr. MAXWELL: You had no communication with any railroad on the subject?
Mr. PROCTER: Personally, no.
Mr. MAXWELL: Well, was there any had with your direction?
Mr. PROCTER: I do not remember. I presume there was.
1168 I may have been consulted at the time. I have forgotten it.
Mr. MAXWELL: You do not recollect anything about that now, do you?
Mr. PROCTER: No, I do not.
Mr. MAXWELL: Does the size of case in which soap is packed being smaller or larger affect the cost?
Mr. PROCTER: Only to a comparatively small amount.
Mr. MAXWELL: It is not a very significant item?
Mr. PROCTER: No, the expense of packing is really quite small.
Mr. COLSTON: Mr. Procter, I understood you this morning when you were talking about the comparative prices of raw material in 1890 and 1891 and the prices since January 1, 1900, to say that they were about the same. I took a note of it. Then you seemed to go on later and say they were higher.
Mr. PROCTER: I said they were not much different. The prices were about the same with the difference that they were slightly higher since January 1 than they were in 1900.
Mr. COLSTON: Now, let me understand you. I understand you to say, as a matter of fact that the price of raw material is not any more than it was in 1890 and 1891?

Mr. PROCTER: Yes, sir; 1890 anyhow.

1169 Mr. COLSTON: Take this matter of cotton seed oil. Does that enter largely into your cost of manufacture?

Mr. PROCTER: Quite largely.

Mr. COLSTON: The cost of that varies considerably in a short period of time, does it not?

Mr. PROCTER: It fluctuates from season to season.

Mr. COLSTON: Does it fluctuate during a season considerably?

Mr. PROCTER: Not a great deal. It is somewhat similar to cotton barring the speculative tendency of cotton.

Mr. COLSTON: About what variations between seasons have you known cotton seed oil to take in the last ten years?

Mr. PROCTER: There was one year the variation was very wide. It advanced I remember perfectly well. We made a lot of money. We bought it at 20 cents a gallon and sold it at something like 48.

Mr. COLSTON: That was, of course, phenomenal.

Mr. PROCTER: It was phenomenal. We could not make soap of it and sold the oil.

Mr. COLSTON: Is resin fluctuating in price?

Mr. PROCTER: Resin varies in price also considerably. It has been low the last 3 or 4 years. This year it has taken the upward

1170 turn.

Mr. COLSTON: Do these two things vary in this respect from tallow or is tallow steadier?

Mr. PROCTER: No, I think they all vary. They are more or less sympathetic.

Mr. COLSTON: They have their ups and downs.

Mr. PROCTER: Yes, sir; they are more or less sympathetic.

Mr. COLSTON: Has there been any decline in raw material since January 1, 1900?

Mr. PROCTER: Yes, sir; the market has weakened since then.

Mr. COLSTON: Take tallow, how much has it been?

Mr. PROCTER: Tallow declined probably 12 to 15 per cent.

Mr. COLSTON: Has it not declined as much as one cent a pound since the 1st of January?

Mr. PROCTER: No, not out West. At one time it broke so that you could buy tallow for a cent a pound from the top, but it is up again today.

Mr. COLSTON: But it has since January 1st fallen as much as a cent a pound?

Mr. PROCTER: Yes, if you got in at the bottom.

Mr. COLSTON: Have other articles that enter into the com-

1171 position of soap fallen since January 1st.

Mr. PROCTER: No, not since January 1st.

Mr. COLSTON: Did not grease go down at the same time tallow did?

Mr. PROCTER: We use very little grease in our soap. Cotton seed oil and resin are about as high as they were in January.

Mr. COLSTON: I do not think there is anything else.

Mr. WARRINGTON: One question I forgot. What, if any, difference in value is there between competitive soaps and the raw materials that enter into their manufacture?

Mr. PROCTER: Do you mean the cost value of the manufactured product as compared with the cost value of the raw material?

Mr. WARRINGTON: Yes, sir.

Mr. PROCTER: The cost of the raw material is more than the price of the soap. I mean that in two senses. First of all the average price of the soap is worth less than the average price of the raw material. I mean the man in the soap business who bought his raw material at the market price at any time since now to last October, with the possible exception of perhaps two weeks in May and sold his
1172 goods at prices current during that time, would have lost money on every pound of soap he turned out.

Mr. COLSTON: That applies to competitive soap only?

Mr. PROCTER: That applies to competitive soap only.

The CHAIRMAN: You mean, pound for pound, the raw material costs more than the soap?

Mr. PROCTER: Pound for pound it costs more than the soap.

Mr. WARRINGTON: On account of the amount of water in it?

Mr. PROCTER: On account of the amount of water. That is not true of Ivory, but it is of the others.

The CHAIRMAN: A given weight of material will make a larger manufacture of soap.

Mr. PROCTER: Yes, sir.

The CHAIRMAN: And the added weight that goes in is water or something that does not cost much.

Mr. PROCTER: Yes, sir; largely water. For instance, a hundred pounds of soap making materials, fats and resin, with the filling—using that term as Mr. Maxwell understands it—sal-soda and silicate which go into it, will make 170 to 175 pounds of soap, high grade laundry soap.

1173 The CHAIRMAN: One hundred pounds of material?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: You say one hundred pounds of material makes 170 pounds of soap.

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Where does the rest go—is it all water?

Mr. PROCTER: Well, not all.

The CHAIRMAN: The largest part?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: I wish to ask Mr. Procter a question which I should wait until rebuttal to ask, but I am afraid I cannot have him here.

The CHAIRMAN: Ask him now.

Mr. WARRINGTON: What, if anything, do you know of the reduction in iron and steel since January 1, 1900—has there been any?

Mr. PROCTER: Yes, sir; there has been a very large reduction.

Mr. WARRINGTON: What, if anything, do you know as to the reduction in the price or cost of cars in that time?

Mr. PROCTER: There has been a very large reduction there.

1174 Mr. MAXWELL: Hold on a minute. Since January 1st? We had that question up before.

Mr. WARRINGTON: It was suggested that I should not ask it and I yielded to the point that that was rebuttal.

Mr. MAXWELL: I did not understand it was on that ground. Let Mr. Procter give his answers and the Court can determine when we come to rebuttal whether that is proper or not.

The CHAIRMAN: You may answer, Mr. Procter.

Mr. PROCTER: There has been.

Mr. WARRINGTON: Do you know to what extent, by percentage or otherwise?

Mr. PROCTER: In cars, does the question apply to?

Mr. WARRINGTON: Yes, sir.

Mr. MAXWELL: Is Mr. Procter qualified to tell us about that?

Mr. PROCTER: I can tell you by our own offers on what we wished to buy ourselves. The difference in reduction there would be about 16 or 17 per cent.

Mr. WARRINGTON: In comparison with what?

Mr. PROCTER: The price they were offered us in January or February of this year.

Mr. WARRINGTON: Well, that was 16 or 17 per cent. lower than what?

1175 Mr. PROCTER: Than the price they were offered us in January or February of this year.

Mr. WARRINGTON: Do you know anything about locomotives in that regard?

Mr. PROCTER: No, I do not, not of personal knowledge.

Mr. WARRINGTON: Gentlemen, you asked Mr. Procter to prepare a rough draft of the tracks, and that is what he did at the noon hour and since he is going away I would like to have him identify that. (Paper produced.)

Mr. MATTHEWS: That will be sufficient for your purposes, will it not?

Mr. COLSTON: We will look at it and see.

Mr. WARRINGTON: What does this paper show that I hand you?

Mr. PROCTER: This shows the approximate plan of the tracks of the I. & M. C. V. Railroad Company.

The CHAIRMAN: And its connections with the other roads mentioned?

Mr. PROCTER: Yes, sir.

Mr. WARRINGTON: I would like if your Honors would be aided in any way for Mr. Procter to point out to you his understanding of those tracks from this little paper.

1176 Mr. PROCTER: (Referring to paper.) This is the C. H. & D. Railroad here. This is north and south this way. There is the C. C. C. & St. L. and the B. & O. S. W. there. This is our warehouses.

The CHAIRMAN: How do you get over here? (Indicating.)

Mr. PROCTER: We come here by the Big Four and switch back this way. (Indicating.)

The CHAIRMAN: And so with the others?

Mr. PROCTER: Yes, sir.

The CHAIRMAN: Your warehouse is a little nearer the C. H. & D.?

Mr. PROCTER: It is quite nearer by a direct line.
The CHAIRMAN: Are those exact distances of any importance?
Mr. MAXWELL: I guess not.
Mr. WARRINGTON: I notice you give some representations of buildings. You do not pretend to give all the buildings, do you?
Mr. PROCTER: No, I do not. I only show the tracks.
Mr. WARRINGTON: These large blue lines show the tracks on your premises which lead to the railroads in question?
Mr. PROCTER: Yes, sir, that is my recollection of the tracks as they stand and Mr. Macdonald agreed with me.
1177 Mr. WARRINGTON: I will offer that.

The same is hereto annexed and marked Exhibit No. 17—Procter.

Mr. WARRINGTON: I think that is all.
Mr. COLSTON: I will ask you this question. You spoke of 17 per cent. lower price at which some cars were offered you than the price which you could have bought them for in February, 1900. How did the price you could buy them for in February, 1900, compare with the price you could have bought them for a year prior to February, 1900?
Mr. PROCTER: I do not know. We had no prices a year prior.
Mr. COLSTON: Was it not greater?
Mr. PROCTER: I presume from general information it was.
Mr. COLSTON: Considerably.
Mr. PROCTER: I do not know.
Mr. COLSTON: Was this 16 or 17 per cent. off more or less than what the cars would have cost a year prior?
Mr. PROCTOR: That I do not know.
Mr. COLSTON: All you know about it is what you say, that the price was that much less than what you could have bought at in February, 1900?
1178 Mr. PROCTER: Yes, sir.
Mr. COLSTON: What kind of cars were they?
Mr. PROCTER: Tank cars.
Mr. COLSTON: You do not know anything about the ordinary box car?
Mr. PROCTER: I do not.
Mr. COLSTON: It is confined to this?
Mr. PROCTER: Yes, sir.
Mr. COLSTON: Are they iron tanks or wooden tanks?
Mr. PROCTER: They are new iron tanks.
Mr. WARRINGTON: Are they steel tanks?
Mr. PROCTER: Yes, they are steel tanks.
Mr. COLSTON: You spoke of the price of rails. Have you bought any rails since January 1st?
Mr. PROCTER: No, I do not remember any.
Mr. COLSTON: What size rail do you use on that railroad of yours?
Mr. PROCTER: I think it is 56.
Mr. COLSTON: Steel or iron?
Mr. PROCTER: Steel.
Mr. COLSTON: That is all.

Mr. MAXWELL: Will you put on that plat while you are here the resin house?

The CHAIRMAN: I was going to say, Mr. Procter, if it is entirely convenient to have a diagram prepared on a somewhat larger scale that would give us a somewhat better idea of these things we should be glad to have it.

Mr. PROCTER: I was thinking, your Honor, that the insurance plat probably shows it better.

The CHAIRMAN: I do not want to put you to the trouble and expense of getting an engineer's map.

Mr. PROCTER: Yes, sir, I can do that.

Mr. MAXWELL: Will you put where the resin house is there. Just mark it "Resin House."

Mr. Procter marked the paper as requested.

Mr. MAXWELL: Mr. Procter has marked on the plat the two resin houses and the box factory. Now, Mr. Procter, that is where you store your resin, is it?

Mr. PROCTER: Yes, sir. When you want resin to use in the factory you take it out of that resin store house?

Mr. PROCTER: Yes, sir; that is done in the transfer of resin
1180 from the sheds to the kettle houses.

Mr. MAXWELL: And also when you get the boxes made.

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: That is all.

Mr. WARRINGTON: How is Ivory protected, if at all, in addition to the way you have already stated?

Mr. PROCTER: It is protected by its trade mark and by the secret formula by which it is produced.

The CHAIRMAN: The formula by which it is made is a trade secret?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: What do you mean by protected by a "trade mark"?

Mr. PROCTER: I mean what I said.

The CHAIRMAN: Under the trade mark laws, I suppose?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Under what trade mark law?

Mr. PROCTER: Well, I am assuming the trade mark laws are good in the United States and pretty generally over the world. It is copyrighted under the copyright law and trade mark law both.

Mr. MAXWELL: Of Congress?

Mr. PROCTER: Yes, sir.

1181 Mr. MAXWELL: And under the trade mark law of Congress?

Mr. PROCTER: I do not know whether Congress passed a trade mark law or not.

Mr. MAXWELL: What I want to find out is whether you have filed a copyright for the word "Ivory."

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Under an Act of Congress?

Mr. PROCTER: I presume it is under an Act of Congress. It was done through Mr. Warrington.

Mr. MAXWELL: You also filed something under the Act of Congress that you called a trade mark?

Mr. PROCTER: I know those matters were taken up and discussed and whatever was necessary to protect us under the trade mark or copy right law was furnished and it was attended to by Mr. Warrington.

Mr. MAXWELL: Just what was done you do not know?

Mr. PROCTER: I know every provision was taken to protect us under those laws.

Mr. MAXWELL: You did not take any of the steps?

Mr. PROCTER: Not personally. The matter was discussed with me and they were taken.

Mr. *Procter:* What were taken?

1182 Mr. PROCTER: The steps necessary to establish its protection.

Mr. MAXWELL: What other brands did you protect in the same way?

Mr. PROCTER: All our brands are copyrighted.

Mr. MAXWELL: Then the same thing was done with respect to every brand?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Did Mr. Warrington do anything different for Ivory than he did for Lenox?

Mr. PROCTER: I do not know that he did.

Mr. MAXWELL: It is your understanding that the same thing was done for each and every one of your brands?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: Copyrighted and trade marked?

Mr. PROCTER: Yes, sir.

Mr. MAXWELL: When was that?

Mr. PROCTER: Well, I do not remember the date of it.

Mr. MAXWELL: How long ago?

Mr. PROCTER: The question of copyright has been up recently, the last few years.

1183 Mr. MAXWELL: You had your own formula for Lenox?

Mr. PROCTER: That is a variable one, as the market varies on raw material. We can produce the same results if at one time we found it cheaper to make different combinations.

Mr. MAXWELL: Do you tell the public generally how you make Lenox soap?

Mr. PROCTER: No.

Mr. MAXWELL: You do not tell them more than you do of the Ivory?

Mr. PROCTER: No, but it is not a fixed formula.

Mr. MAXWELL: It is a variable formula?

Mr. PROCTER: Variable according to the price.

Mr. MAXWELL: Whatever it is it is a formula you keep to yourself?

Mr. PROCTER: Yes, sir, I suppose we do.

Mr. MAXWELL: Do you know whether any other soap manufacturer uses the same formula?

Mr. PROCTER: Which formula do you mean? We have used a hundred.

Mr. MAXWELL: Any of them?

Mr. PROCTER: They have undoubtedly used some of them.

1184 Mr. MAXWELL: There are some of them they do not use?

Mr. PROCTER: I do not know. It is like taking a hundred different articles and mixing them together and saying you mix the same proportions every time. You do not. You mix them according to which will mix with the greatest economy. It may be at one time 90 per cent. of one and 10 per cent. of another and at another time it may be 85 and 5 and 10. They vary.

Mr. MAXWELL: Whatever the formula is for the time being, that is your formula and is kept to yourself, is it?

Mr. PROCTER: Yes, sir; as in the ordinary business process we would.

Mr. MAXWELL: How long has Ivory been manufactured and sold by the Procter & Gamble co-partnership and the Procter & Gamble corporation under that name?

Mr. PROCTER: Twenty-two or twenty-three years.

Mr. MAXWELL: Has that character or kind of soap ever been sold, or put upon the market or advertised under any other name than Ivory?

Mr. PROCTER: By us?

Mr. MAXWELL: Yes, sir.

Mr. PROCTER: No, not advertised. The first soap for the

1185 first two years was put out as "White" soap. Then it was changed and since has been Ivory.

Mr. WARRINGTON: So that soap is sold as Ivory?

Mr. PROCTER: Yes, sir.

Mr. COLSTON: And Lenox is known as Lenox?

Mr. PROCTER: Yes, sir.

Mr. COLSTON: That is all.

The CHAIRMAN: If there is nothing further to be asked of Mr. Procter he will be excused and will also be excused from further attendance.

Mr. WARRINGTON: I think I shall have no more witnesses in chief. We have a little record evidence and we have one or two depositions.

The CHAIRMAN: We will take an adjournment until 10 o'clock Monday morning.

At 4:50 o'clock p. m., the Commission adjourned until 10 o'clock Monday, June 25.

1186 Fifth Day.

WASHINGTON, D. C., *June* 25, 1900—10 o'clock a. m.

The CHAIRMAN: Gentlemen, you may proceed.

Mr. MATTHEWS: The following deposition of George W. Dexter was taken at Chicago at the same time that Mr. Jenning's deposition was taken:

(The deposition referred to was read—the direct examination by Mr. Matthews, and the cross-examination by Mr. Bayless;) Redirect examination read by Mr. Matthews.

(The deposition of Walter W. Dodge, and the deposition of Jacob C. Flach were also read.)

Mr. WARRINGTON: I wish to offer the supplemental order of the Commission upon motion for rehearing—first it is suggested that I ask the stenographer to identify the original order of 1890. (The same is hereto attached and marked exhibit 18.) Also the supplemental order of the Commission for rehearing in the same case of Procter & Gamble against the Cincinnati, Hamilton & Dayton and other railroads. (The same is hereto attached and marked
1187 exhibit 19.)

Mr. COLSTON: Objection is reserved on behalf of the Baltimore & Ohio Southwestern.

Mr. MAXWELL: Objection is also reserved on behalf of the Cincinnati, Hamilton & Dayton Railway and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, on the ground that the present plaintiffs were not the plaintiffs in that suit, and that these parties were not parties to that suit; also that the order itself was not within the jurisdiction of the Commission.

Mr. BAYLESS: I also reserve an objection.

Mr. WARRINGTON: Now, we are going to try to dictate the stipulations that we had about these matters.

Stipulations were read by Mr. Matthews, as follows:

"For the purpose of this case, to save the necessity of taking testimony, without waiving the defendants' existence it is stipulated as follows:

"Stipulation I.

"That the Cincinnati, Hamilton & Dayton Railway Company owns and operates among other railroads the railroad which at the time the order was made by the Interstate Commerce Commission, on July 17, 1890, and after rehearing was made to go into effect on January —, 1891, in the cases of Procter & Gamble *v.* Cincin-
1188 nati, Hamilton & Dayton Railroad Company, the Pittsburg, Cincinnati & St. Louis Railway Company, and the Pennsylvania Railroad Company; Procter & Gamble *v.* the Cleveland, Cincinnati, Chicago & St. Louis Railroad Company, the West Shore & Michigan Southern Railway Company, and the New York Central & Hudson River Railroad Company; and Procter & Gamble *v.* Orland Smith and H. C. Yergason, Receivers of the Cincinnati, Wash-

ington & Baltimore Railroad Company, and the Baltimore & Ohio Railroad Company, which cases were heard and tried as one case by said Commission and which railroad at the first of the dates aforesaid was owned and operated by the Cincinnati, Hamilton & Dayton Railroad Company, the said Cincinnati, Hamilton & Dayton Railway Company having acquired said railroad as the result of the consolidation July 8, 1895, under the laws of Ohio, of the Cincinnati, Hamilton & Dayton Railroad Company, the Cincinnati, Dayton & Ironton, and the Cincinnati, Dayton & Chicago Railroad Companies.

"Stipulation II.

"That the Pittsburg, Cincinnati & St. Louis Railway Company owns and operates among other railroads the railroad which at the time the order was made by the Interstate Commerce Com-
1189 mission on July 17, 1890, in the cases mentioned above, which cases were heard and tried as one case by said Commission, and which railroad at the first of the dates aforesaid was owned and operated by the Pittsburg, Cincinnati, & St. Louis Railway Company, the said Pittsburg, Cincinnati, Chicago & St. Louis Railway Company having acquired said railroad as the result of the consolidation October 1, 1890, under the laws of Ohio and other states, of the Pittsburg, Cincinnati & St. Louis Railway, The Chicago, St. Louis & Pittsburg Railroad, the Cincinnati & Richmond Railroad, and the Jeffersonville, Madison & Indianapolis Railroad Companies.

"Stipulation III.

"That the Baltimore & Ohio Southwestern Railroad Company now owns and operates the railroad, and ever since the first day of August, 1899, has owned and operated the same, which was in the possession and control of receivers in 1889, 1890 and 1891, to wit: the Cincinnati, Washington & Baltimore Railroad, said Baltimore & Ohio Southwestern Railroad Company having succeeded to said railroad through purchase of the Baltimore & Ohio Southwestern Railway Company in 1899, the defendant in this proceeding, to wit, the Baltimore & Ohio Southwestern Railroad Company having purchased said railroad at foreclosure sale on the — day of —, 1899
1190 made under a mortgage of date 1889."

Mr. COLSTON: I might add so that this Commission will understand that this stipulation applies to only part of the railroad that is now owned by the Baltimore & Ohio Southwestern Railroad Company. The present railroad extends from Parkersburg to East St. Louis and also to Louisville, Ky., but the part covered by this stipulation extends only from Parkersburg to Cincinnati.

Mr. MAXWELL: The other part was at the time of the order owned by another company altogether.

Mr. COLSTON: Yes, sir. By the Ohio & Mississippi Railroad Company.

Mr. WARRINGTON: If it please the Commission, we have reached

the point when we shall rest. We wish out of abundant caution to say that we may have forgotten some paper, but subject to asking the privilege to offer any such paper, after calling it to the attention of the other side, we rest.

Mr. MAXWELL: I will ask Mr. Potter to take the stand.

1191 G. L. POTTER, a witness called on behalf of Defendant, being duly sworn, testified as follows:

Mr. MAXWELL: What is your residence and business, Mr. Potter?

Mr. POTTER: My residence is Pittsburg, Penn., and my position is General Superintendent of Motive Power of the Pennsylvania Lines West of Pittsburg.

Mr. MAXWELL: I have asked you to prepare certain statements to show the comparison of certain prices for the years 1898, 1899 and 1900. Will you state whether that statement was prepared by you in response to my direction.

Mr. POTTER: Yes, sir; it was prepared under my direction.

Mr. MAXWELL: Is that correct?

Mr. POTTER: It is correct; yes, sir.

Mr. WARRINGTON: Did you make that paper?

Mr. POTTER: It was made under my direction by my chief clerk.

Mr. WARRINGTON: What have you to do with the purchasing of locomotives?

1192 Mr. POTTER: I make all contracts for the purchase of locomotives for the Pennsylvania lines west of Pittsburg.

Mr. WARRINGTON: We object to the paper on the ground that opinion evidence cannot be offered in that way.

Mr. MAXWELL: We can remove that objection very speedily. Have you contracted for the 90 locomotives mentioned on this paper?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: At the prices which are mentioned here?

Mr. POTTER: Part of them are contracted for at the prices mentioned there and part of them built in the shops of the Lines East of Pittsburg. We estimate that the increase of cost will be the same as the increase in cost of other locomotives built by other outside parties.

Mr. MAXWELL: Now we will offer this.

The same is hereto attached and marked Exhibit 20.

Mr. COLSTON: I want you to read that for my benefit.

Mr. MAXWELL: This statement is headed "Locomotives;" Price per Locomotive. "Class H 4, 1898, $12,462.00; 1899, $12,350.00; 1900, $17,350.00; increase in 1900 over 1899 40 5/10 per cent.; increase in 1900 over 1898, 39 1/10 per cent. Locomotives
1193 to be rebuilt in 1900, Northwest System, 50, Southwest System 40; total 90. The increase in 1900 over 1899 on the 90 locomotives is $450,000.00 and the increase in 1900 over 1898 on the 90 locomotives is $439,920.00.

The CHAIRMAN: Mr. Maxwell, you will hardly claim that the paper itself is proof of the fact. It is like a memorandum from which he

Mr. MAXWELL: He says it is correct.

Mr. WARRINGTON: We object to the paper. Of course I do not care about technical differences, but I never heard of opinion evidence going in in tabulated form in this way.

The CHAIRMAN: If you press that technical objection it will be considered of course. Then Mr. Maxwell will be obliged to ask the witness all these questions. Would the difficulty be eliminated, or reduced if, instead of producing the memorandum he should ask the witness every question which is answered by the figures on the memorandum?

Mr. WARRINGTON: Well, I think it would, your honor, but as the papers are presented we will pass on that question. I withdraw my objection to the last paper that was offered.

The CHAIRMAN: And that refers to the comparative cost of locomotives?

Mr. WARRINGTON: Yes, sir.

1194 Mr. MAXWELL: What, if anything, do you have to do with construction of cars?

Mr. POTTER: All car construction is done under my jurisdiction. All contracts for new cars are made by me.

Mr. MAXWELL: I suppose you of course keep records of all expenditures in connection with it?

Mr. POTTER: I sign all bills for it.

Mr. MAXWELL: You do?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: Have you a statement showing the comparative prices in 1898, 1899 and 1900 of freight cars rebuilt by outside companies for your company?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: Do you know the prices?

Mr. POTTER: I have a memorandum. I cannot recall them.

Mr. COLSTON: For what period?

Mr. POTTER: For 1898, 1899 and 1900.

Mr. MAXWELL: Is that statement correct?

Mr. POTTER: Yes, sir; it is.

Mr. MAXWELL: We will offer it.

Same is hereto attached and marked Exhibit 21.

1195 Mr. MAXWELL: Has your company, itself, built, or rebuilt freight cars to take the place of vacant numbers?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: And what have you to do with that?

Mr. POTTER: I issue the orders to have the cars built and determine the kind of cars that shall be built, and I have the rebuilding of cars under my jurisdiction.

Mr. MAXWELL: What, if anything, do you have to do with knowing the prices of the articles or materials that go into the construction of these cars?

Mr. POTTER: The material is ordered in accordance with my instructions and furnished by the purchasing agent. The bill is passed in the Motive Power Department and the amounts charged out at the rates given on the bills.

Mr. MAXWELL: Now, have you prepared a statement showing the comparative cost of the various items that go into the construction of a car?

Mr. POTTER: I have had such a statement prepared and have looked it over.

Mr. MAXWELL: Is it correct?

Mr. POTTER: I believe that it is correct.

Mr. MAXWELL: We offer that in evidence.

The same is hereto attached and marked Exhibit 22.

1196 The CHAIRMAN: That is a comparative statement for the same three years of the cost of general articles that enter into the construction of freight cars—various materials?

Mr. MAXWELL: Yes, sir. Axles, castings, bronze, copper, springs, about a dozen kinds of springs, etc., in 1900 over 1897, 1898 and 1899. How many cars are to be rebuilt in your department, freight cars to fill vacant numbers for 1900?

Mr. POTTER: We estimate that it is about 2,000. I do not recollect the exact number.

Mr. MAXWELL: Have you made a statement showing what the cost of those cars will be in 1900 as compared with the same cars in 1898 and 1899?

Mr. POTTER: I have made a statement of what we estimate the cost will be.

Mr. MAXWELL: Is that the statement. (Handing to witness) and state whether it is correct.

Mr. POTTER: Yes, sir.

Mr. MAXWELL: We offer that in evidence.

The same is hereto attached and marked Exhibit 23.

Mr. WARRINGTON: Does that strike the court as being in the same category as the other? It is nothing but speculation on his part as to what something will be in the future about prices.

1197 The CHAIRMAN: If the estimate is based on the present cost of materials, then it would seem to be just like the others; but if he has estimated what it will cost to get the materials that is another thing.

Mr. MAXWELL: How did you make that estimate? On what basis?

Mr. POTTER: On the basis of cost of materials at the time this was made up, a short time ago. The material for about 1,000 of these cars has already been bought at these prices.

Mr. MAXWELL: At those prices?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: And as to the rest, as to the 1,093 remaining, the estimate is made on the basis of those prices?

Mr. POTTER: On the basis of the same prices.

Mr. MAXWELL: On the basis of what you have actually paid?

Mr. POTTER: Yes, sir.

The CHAIRMAN: It will be received.

The same is hereto attached and marked Exhibit 23.

Mr. MAXWELL: The result of this statement is to show the
1198 increase in 1900 over 1898, of 27.6 per cent. and over 1899 of 14.2 per cent., or an increased cost in 1900 of these 2,093 cars over 1898 of $389,601 and an increase in 1900 over what they cost in 1899 of $188,370.

The CHAIRMAN: Does that mean that you built 2,000 cars in 1898 which cost so much and in 1899 the number of cars named at such a cost?

Mr. POTTER: Not that we built that particular number; I do not recollect the exact number, but it was somewhere in that neighborhood, and they cost at the rate given there.

The CHAIRMAN: It is at the average cost in 1898?

Mr. POTTER: Yes, sir.

The CHAIRMAN: You looked it up to see what the average cost was to your company in 1898, did you?

Mr. POTTER: Yes, sir.

The CHAIRMAN: And in 1899?

Mr. POTTER: Yes, sir.

The CHAIRMAN: Now, on the basis of the cost of material that you have already purchased for 1,000 cars in 1900, and estimating the cost on the same basis for another thousand, you make your figures of what the 2,000 cars will cost this year?

1199 Mr. POTTER: Yes, sir.

The CHAIRMAN: And that means the percentage of increase which Mr. Maxwell stated?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: I have a similar statement here with reference to passenger equipment, cars, and will offer it or not as the Commission or counsel on the other side think proper.

The CHAIRMAN: We suggest that you refrain from offering that, Mr. Maxwell.

Mr. MAXWELL: Very well. Mr. Potter, what, if anything, do you have to do with the price of steel rails—the cost of steel rails—on your System?

Mr. POTTER: Nothing directly.

Mr. MAXWELL: Do you know the cost of steel rails?

Mr. POTTER: I do; yes, sir.

Mr. MAXWELL: Do your records show the cost to your company of steel rails in 1898 and 1899?

Mr. POTTER: Yes, sir.

Mr. MAXWELL: Have you prepared a statement from the records of your company showing the comparative cost of steel rails in the three years 1898, 1899, and 1900?

1200 Mr. POTTER: I have.

Mr. MAXWELL: Is that the statement and is it correct? (exhibiting).

Mr. WARRINGTON: I object to his answering. He says he does not know; that he has nothing to do with those things. I object on the ground of his incompetency.

Mr. MAXWELL: I understood him to say he did know.

Commissioner YEOMANS: He said he had nothing to do with purchasing, but that he did know what they cost.

Mr. WARRINGTON: How do you know—by looking at your records?

Mr. POTTER: That is the only way I know.

Mr. WARRINGTON: I submit my objection.

Mr. MAXWELL: How do you know the price of steel rails this year?

Mr. POTTER: From seeing it in the records and from talking with the persons who bought them and getting the information from them.

Mr. MAXWELL: Do your records contain a statement of the cost of steel rails?

Mr. POTTER: Yes, sir.

1201 Mr. MAXWELL: How is that statement with respect to the cost of steel rails in 1898 and 1899 made up?

Mr. WARRINGTON: We object and submit the objection.

The CHAIRMAN: We will take the testimony. Everybody knows what the price of steel rails were in those three years; Mr. Macdonald is perfectly qualified to know whether the statement is correct or not.

Mr. WARRINGTON: Your honors will allow us to reserve an objection.

Mr. MAXWELL: Is that statement correct?

Mr. POTTER: I believe it to be so.

The same is hereto attached and marked Exhibit 24.

Mr. MAXWELL: Do you have anything to do with coal in your department, and, if so, what?

Mr. POTTER: I make all contracts and pass all bills for coal used for locomotive use.

Mr. MAXWELL: Have you made a statement showing the comparative prices for coal in these three years?

Mr. POTTER: I have.

Mr. MAXWELL: Is that it and is it correct?

Mr. POTTER: This is it and it is correct?

Mr. MAXWELL: We will offer that.

The same is hereto attached and marked Exhibit 25.

1202 The CHAIRMAN: You offer this last statement.

Mr. MAXWELL: Yes, sir.

The CHAIRMAN: He says it is correct?

Mr. MAXWELL: Yes, sir. This is for the years 1897, 1898, 1899, and 1900, and shows the average price.

The CHAIRMAN: We will take a recess until 2 o'clock.

At 12:30 a recess was taken.

1203 After Recess.

The CHAIRMAN: Do you wish to resume with Mr. Potter?

Mr. COLSTON: I would like to ask him a few questions.

Mr. G. L. POTTER resumed the stand.

Mr. COLSTON: I believe you said you were General Superintendent of Motive Power of the Pennsylvania Lines west of Pittsburg?

Mr. POTTER: Yes sir.

Mr. COLSTON: One of those lines is what is called the Pan Handle, which runs from Pittsburg to Cincinnati.

Mr. POTTER: Yes sir.

Mr. COLSTON: That is almost entirely through the state of Ohio?

Mr. POTTER: Yes sir.

Mr. COLSTON: Now, are these prices you have given in these various statements that have been handed in and identified by you as to cost of locomotives, cost of freight cars, freight car repairing, the building of freight cars, and the list of materials that are used in railroad operation, are those prices general market prices that govern generally? Would they be the prices that all railroads would have to pay?

1204 Mr. POTTER: I believe so, yes sir.

Mr. COLSTON: I believe that is all. I suppose if Mr. Bayless wants to ask any questions, he may be allowed to do — when he comes in.

The CHAIRMAN: Certainly.

Cross-examination:

Mr. WARRINGTON: Referring to Exhibit No. 20 and to the year 1900, at what date in 1900 is the price there stated taken, or what date does that date represent?

Mr. POTTER: For locomotives now being built. The first ones were to have been turned out last week.

Mr. WARRINGTON: When were the contracts made for those locomotives?

Mr. POTTER: I believe either in December or January.

Mr. WARRINGTON: The prices were fixed then at that time?

Mr. POTTER: Yes, sir; I believe January was the date.

Mr. WARRINGTON: Is that so as to all of Class H-4?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: What date is intended to be represented under the year 1899?

Mr. POTTER: I cannot give the exact date, but in the early part of the year, I believe—about January, or possibly in December

1205 of the year before.

Mr. WARRINGTON: I ask the same question as to 1898?

Mr. POTTER: I cannot say positively.

Mr. WARRINGTON: You do not know?

Mr. POTTER: I do not recollect the time of year the contract was made.

Mr. WARRINGTON: You did not refresh your memory when this exhibit No. 20 was made up did you?

Mr. POTTER: Not in regard to the date of the contract, no sir.

Mr. WARRINGTON: Were there any variations in price in 1898, in the prices of materials which enter into the construction of locomotives?

Mr. POTTER: Yes, sir; they were somewhat higher in 1897, as I recollect it.

Mr. WARRINGTON: Then in the year 1898, did they vary any?

Mr. POTTER: I am not able to answer that.

Mr. WARRINGTON: That is to say you do not know, do you?
Mr. POTTER: Not positively.
Mr. WARRINGTON: You did not refresh your memory as to that when making up Exhibit No. 20?
Mr. POTTER: No.

1206 Mr. WARRINGTON: Were there any variations in prices of such materials during the year 1899?
Mr. POTTER: Do I understand the question to be between different periods of that year?
Mr. WARRINGTON: Yes sir.
Mr. POTTER: I believe there was.
Mr. WARRINGTON: What were they?
Mr. POTTER: I can not say to what extent, but they varied somewhat during the year. The prices of all materials fluctuated more or less.
Mr. WARRINGTON: You cannot give us any idea of what the fluctuations were?
Mr. POTTER: No definite information.
Mr. WARRINGTON: Then, are you able to state whether you took the higher or lower prices for the year 1899 in making up this paper.
Mr. POTTER: In regard to those locomotives, they were all contracted for at one time, so that the price given is the price for all locomotives of that class built in those years.
Mr. WARRINGTON: And you cannot give those dates?
Mr. POTTER: No, sir.
Mr. WARRINGTON: Now take the year 1900. How much have the prices of materials which enter into locomotives fallen since January 1st, 1900?

1207 Mr. POTTER: I cannot give exact figures, but there has been some reduction in the price of material. Boiler and fire box steel has been reduced in price some.
Mr. WARRINGTON: Mr. Potter, have not all classes of steel fallen in price since January 1st. Is not that well known in the markets of this country?
Mr. POTTER: I believe there has been no reduction in the price of axles. To us, there has been no reduction in the price of castings.
Mr. WARRINGTON: Those are the two exceptions you make to what you understand to be the rule?
Mr. POTTER: No, those are two that I recollect, have knowledge of. Of the balance I have not sufficient knowledge to be able to express an opinion.
Mr. WARRINGTON: What do you mean by no reduction in castings "to us."
Mr. POTTER: We make a contract in the early part of the year and the price made under the contract in the early part of this year is still in force.
Mr. WARRINGTON: That is all you mean by that?
Mr. POTTER: Yes sir.

Mr. WARRINGTON: Now, as to axles. Do you mean axles which are used in locomotives?

1208 Mr. POTTER: No, I refer to axles used in cars in that statement.

Mr. WARRINGTON: You did not mean it to apply to axles used in locomotives?

Mr. POTTER: No sir.

Mr. WARRINGTON: Confining our attention to locomotives for the moment, what materials that enter into the construction of locomotives have not fallen in price since January 1st—are there any?

Mr. POTTER: To the locomotive builder I am not able to say.

Mr. WARRINGTON: Do you not know that those articles have fallen in price in the market generally?

Mr. POTTER: I know there has been some reduction in the price of some materials, but just what and to what extent I am not able to say.

Mr. WARRINGTON: Did I understand you to say that you were the Purchasing Agent?

Mr. POTTER: No sir.

Mr. WARRINGTON: What is the meaning of Superintendency of Motive Power? What does that signify?

Mr. POTTER: To have the general charge of the construction and maintenance of the locomotives and cars of the railroad.

Mr. WARRINGTON: Do you mean that it is not to familiarize yourself with the market prices of articles which enter into the

1209 locomotives?

Mr. POTTER: No, it is not necessary. I am not responsible for the price of materials.

Mr. WARRINGTON: Who is responsible?

Mr. POTTER: The Purchasing Agent.

Mr. WARRINGTON: Is he here?

Mr. POTTER: No sir.

Mr. WARRINGTON: Then, you do not know what the prices are? Am I right about that?

Mr. POTTER: I acquaint myself with the prices when necessary. I can have them upon application at any time, and know from time to time when it is necessary.

Mr. WARRINGTON: Then, although you have something to do with making contracts and the like, you mean to tell the Commission now, as I understand it, that you cannot tell me what articles have fallen in price or how much they have fallen in price which are used in the construction of locomotives—I mean between January 1st of this year and today?

Mr. POTTER: In answer to your question generally, yes sir.

Mr. WARRINGTON: Now, if you can tell me what ones they are—I will ask to have that question repeated.

The question was repeated by the stenographer.

Mr. POTTER: My answer is that I can not tell you the items that have fallen in price, nor to what extent. I have not had

1210 occasion to use this information recently, and therefore do not have it.

Mr. WARRINGTON: You do know in a general way that the prices have fallen?

Mr. POTTER: To some extent, yes sir.

Mr. WARRINGTON: Now, can you give me the percentage approximately?

Mr. POTTER: No sir.

Mr. WARRINGTON: Has it been as much as 50 per cent.?

Mr. POTTER: I do not think so.

Mr. WARRINGTON: Could you say it was under 40 per cent.?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Well, would you say that it was as much as 35 per cent.?

Mr. POTTER: That it had fallen as much as 35 per cent.?

Mr. WARRINGTON: Yes sir.

Mr. POTTER: I do not believe so.

Mr. WARRINGTON: Well, give what you think.

Mr. POTTER: Well, I would say the average of prices of material that go into the construction of locomotives has not fallen in price as much as 10 per cent. That is my opinion and I do not know the facts.

Mr. MAXWELL: I suppose you understand Mr. Warring-
1211 ton, that the lines west of Pittsburg do not build their locomotives. They buy them.

Mr. WARRINGTON: What is signified or meant by Class H-4 on Exhibit No. 20?

Mr. POTTER: That signifies the type of the locomotive by a base symbol, using the letters of the alphabet.

Mr. WARRINGTON: What do you mean by "base symbol?"

Mr. POTTER: The H-4 Engine is of the consolidation type. All consolidation engines are Class H—H-1, 2, 3 etc., according to the design and date adopted. The class H-4 is the fourth type of consolidation engine in service on our line.

Mr. WARRINGTON: When was that class adopted?

Mr. POTTER: In 1898.

Mr. WARRINGTON: What do you mean by a consolidation engine?

Mr. POTTER: An engine with four pairs of drivers and a single pair of wheels on the truck.

Mr. WARRINGTON: How many tons?

Mr. POTTER: They may vary.

Mr. WARRINGTON: In class 4, do they vary?

Mr. POTTER: No, those engines weigh 176,000 pounds; that is, the engine alone in working order.

Mr. WARRINGTON: Do you regard that as a large engine?
1212 Mr. POTTER: A very large engine, yes sir.

Mr. WARRINGTON: How many tons would that be?

Mr. POTTER: That would be 88 tons.

Mr. WARRINGTON: Do you not have locomotives that weigh 120 tons?

Mr. POTTER: No sir.

Mr. WARRINGTON: Are the 88 ton locomotives the largest you have?

Mr. POTTER: No, we have a ten-wheel engine that weighs 180,000 pounds.

Mr. WARRINGTON: What class is that?

Mr. POTTER: G-4.

Mr. WARRINGTON: Those are your freight locomotives?

Mr. POTTER: Passenger.

Mr. WARRINGTON: Do they weigh more than the freight locomotives?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Were those locomotives in use in 1898?

Mr. POTTER: Which?

Mr. WARRINGTON: The 88 ton locomotives?

Mr. POTTER: In the latter part of 1898.

Mr. WARRINGTON: That was the first time you had locomotives of that class?

1213 Mr. POTTER: Yes sir; of that class.

Mr. WARRINGTON: Now, it is that class that are embraced in this exhibit No. 20?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Is there any difference in the weight of any of those locomotives of that class?

Mr. POTTER: Very little.

Mr. WARRINGTON: Mr. Potter, what weight locomotive was used in 1890 corresponding in its office and functions with this H-4?

Mr. POTTER: What was known at that time as the Class R engine.

Mr. WARRINGTON: What did it weigh?

Mr. POTTER: Class R weighed about 120,000 to 125,000 pounds.

Mr. WARRINGTON: That is, it weighed 60 to 62½ tons.

Mr. POTTER: Yes sir.

Mr. WARRINGTON: When was that class adopted?

Mr. POTTER: The first of that class, I believe, were built about 1884 or 1885.

Mr. WARRINGTON: They were how generally in use on your road in 1884 or 1885.

Mr. POTTER: Are you speaking of the lines west now?

Mr. WARRINGTON: Yes sir.

1214 Mr. POTTER: We had none of them at that time.

Mr. WARRINGTON: Did you have any of them in 1887?

Mr. POTTER: We began the use of them in 1888, I think.

Mr. WARRINGTON: West of Pittsburg?

Mr. POTTER: West of Pittsburg.

Mr. WARRINGTON: On the road now corresponding to the P. C. C. & St. L.

Mr. POTTER: I can not speak so correctly of that part of the line, as my jurisdiction did not extend over it at that time.

Mr. WARRINGTON: What was the ordinary weight of the locomotive that was in use at that time?

Mr. POTTER: 108,000 pounds.

Mr. WARRINGTON: Now, the heavy locomotive has been brought into use quite recently, has it not?

Mr. POTTER: The extremely heavy ones, yes, sir; within the last three or four years, or four or five years.

Mr. WARRINGTON: What is the object in changing their weight?

Mr. POTTER: To enable the road to be operated economically.

Mr. WARRINGTON: Is that so as to the cars, a corresponding increase in their weight and capacity?

1215 Mr. POTTER: Yes sir.

Mr. WARRINGTON: Is that so as to road bed, including rails and bridges?

Mr. POTTER: They are a necessity to the increased locomotives and cars.

Mr. WARRINGTON: Do you know the percentage of economy caused by that change from light equipment and light rails and bridges to the heavy equipment and heavy rails and bridges?

Mr. POTTER: I am not able to give it. There are so many changes taking place at the same time we have not been able to determine the exact percentage of economy effected.

Mr. WARRINGTON: You know that it is considerable, substantial, the percentage of economy gained?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Do you know what a 108,000 pound locomotive cost, in 1887?

Mr. POTTER: About $9,000.

Mr. WARRINGTON: What did it cost in 1888?

Mr. POTTER: About the same.

Mr. WARRINGTON: In 1889?

Mr. POTTER: I do not think there was much change in the cost at that time.

1216 Mr. WARRINGTON: In 1890?

Mr. POTTER: I think they were not building that class of engines at that time.

Mr. WARRINGTON: What did the 120,000 and 125,000 pound engine cost between 1887 and 1890, including both years?

Mr. POTTER: I can not answer that for earlier than about 1889, and I think they cost about $9,500 at that time.

Mr. WARRINGTON: That is to say, the difference between the 108,000 pound locomotive and the 120,000 to 125,000 pound was $500?

Mr. POTTER: Somewhere between $500 and $1,000. Those figures I gave you are approximate.

Mr. WARRINGTON: What is the difference in power between a locomotive weighing 108,000 and one weighing 125,000 pounds?

Mr. POTTER: That depends on the dimensions of the cylinder wheels and the pressure carriage.

Mr. WARRINGTON: Take the two classes, the 108,000 and the 125,000 pounds, what was the difference in power?

Mr. POTTER: About 65 per cent. greater, the H-4. The H-4 was about 65 per cent. greater than the H-2, which was the engine that weighed 108,000 pounds.

Mr. WARRINGTON: I was asking you about the 120,000
1217 and 125,000 in comparison with the 108,000?

Mr. POTTER: Those engines are about 8 per cent. more powerful.

Mr. COLSTON: Which is?

Mr. POTTER: The R is about 8 per cent. more powerful than the 8, as we knew it at that time, which is now H-2.

Mr. WARRINGTON: An H-4 is 65 per cent. more powerful than an H-2?

Mr. POTTER: Than an H-2.

Mr. WARRINGTON: An H-2 weighed 108,000 pounds or 54 tons; is that right?

Mr. POTTER: That is right.

Mr. WARRINGTON: The H-4 is the 176,000 or 88 ton locomotive?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Is not the difference in power between those two classes of locomotives more than you have stated?

Mr. POTTER: About that, I think. I can figure it out.

Mr. WARRINGTON: Do you know what I mean by "power?" It may be that I am using a term that is not correct, and I will ask you to inform me. What word do you use to describe horse power or capacity to pull?

1218 Mr. POTTER: Tractive power.

Mr. WARRINGTON: When I asked you these questions, did you understand that I was alluding to what you call tractive power?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: What is the difference in tractive power between an 88 ton and a 90 ton locomotive?

Mr. POTTER: The 90 ton is less powerful than the 88.

Mr. WARRINGTON: That is because it is built for speed?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: That is the 90 ton is constructed for speed and not for tractive power—that is the reason?

Mr. POTTER: Well, the 90 ton is constructed for speed and high tractive power at high speed.

Mr. WARRINGTON: Which is the higher class of engine in point of cost?

Mr. POTTER: The ten-wheel engine is a more expensive engine.

Mr. WARRINGTON: That is the 88 ton?

Mr. POTTER: No, the 90 ton engine is a more expensive engine.

Mr. WARRINGTON: That is the one constructed for speed

1219 and tractive power at high speed?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: What variations in prices have taken place, say since 1893?

Mr. POTTER: And the present time?

Mr. WARRINGTON: Well, take 1898?

Mr. POTTER: The prices of locomotives?

Mr. WARRINGTON: Yes, take the interval between the beginning of 1893 and the close of 1897?

Mr. POTTER: I do not believe I can answer that question.

Mr. WARRINGTON: Well, you know that prices went down very low, do you not?

Mr. POTTER: Yes sir; during the period between 1893 and 1897

the prices were very low, but just when they began to rise, I am not sure whether the latter part of 1897 or the early part of 1898.

Mr. WARRINGTON: Can you tell me what an H-2 locomotive cost in 1894 and 1895?

Mr. POTTER: I cannot. We did not have any biult during that period.

Mr. WARRINGTON: Could you tell me the cost of any locomotive at that time?

Mr. POTTER: We had some class R's, or, as you designate them, 120,000 pound engines built in 1895, and my recollection
1220 is that they cost about $9,500. I am not entirely clear on that, but that is my recollection.

Mr. MAXWELL: Was that in 1894?

Mr. POTTER: 1895.

Mr. WARRINRTON: Do you mean to say there was no difference in prices between the period of 1897 and 1889 and the period of 1894 and 1896?

Mr. POTTER: From recollection, no; I may be in error.

Mr. WARRINGTON: Mr. Potter, when were the articles which enter into the construction of locomotives ever so cheap as they were during the last period I have mentioned—1895 and 1896?

Mr. POTTER: I do not know.

Mr. WARRINGTON: Do you not know that they were lower—I can extend that—that they were lower then *and* 1897 than they were ever known to be?

Mr. POTTER: The price of material was very low at that time. My recollection of that price is as I gave it. I may be wrong.

Mr. WARRINGTON: Take all sorts of material into which steel or iron entered, were not they lower in the period I have mentioned than they ever were before?

1221 Mr. POTTER: I believe they were.

Mr. WARRINGTON: Well, were not they materially lower?

Mr. POTTER: Well, that I do not know.

Mr. WARRINGTON: Do you mean you never did know or you do not recollect?

Mr. POTTER: I do not recollect any period where it was lower than that.

Mr. WARRINGTON: Now, do you not know that locomotives cost more between 1887 and 1889 than they did in the other period I mentioned?

Mr. POTTER: No, I do not know that they did.

Mr. WARRINGTON: Do you know they did not?

Mr. POTTER: No.

Mr. WARRINGTON: Then, you have no knowledge on the subject?

Mr. POTTER: I do not recollect further than I have stated.

Mr. WARRINGTON: The reason for that is that you do not keep yourself posted as to prices, is that it?

Mr. POTTER: I kept myself posted probably as well at that time as others, but I may have forgotten the exact price.

Mr. WARRINGTON: Did you refresh your memory before you came here?

1222 Mr. POTTER: Not on that point.

Mr. WARRINGTON: Were you asked to do so.

Mr. POTTER: No sir.

Mr. WARRINGTON: So you did nothing except as to the years described in the exhibits which are produced by you.

Mr. POTTER: That is all.

Mr. WARRINGTON: You knew you were to come here to testify?

Mr. POTTER: Yes, sir.

Mr. WARRINGTON: How many locomotives do you rebuild a year—I mean does your company?

Mr. POTTER: That varies with the times. Some years we built scarcely any. Other years we built a large number.

Mr. WARRINGTON: How many did you rebuild last year?

Mr. POTTER: Last year we rebuilt—if you will allow me to refer—I think I have a memorandum—I think 60 locomotives. (After referring to paper) It is 55.

Mr. WARRINGTON: How many in 1898?

Mr. POTTER: I am not certain, but I think about 40.

Mr. WARRINGTON: What do you mean by "rebuilding?" Is that done by your company?

Mr. POTTER: "Rebuilding" means the replacement of an engine that is worn out.

1223 Mr. WARRINGTON: Then it means to construct a new locomotive?

Mr. POTTER: Yes, sir.

Mr. WARRINGTON: To take the place and number of the one worn out?

Mr. POTTER: That is right.

Mr. WARRINGTON: The heavier the locomotive the less number you have to have—is that so.

Mr. POTTER: If your business does not increase proportionately.

Mr. WARRINGTON: If the business increases proportionately then, of course, you have to keep up with the locomotives. How has it been with you?

Mr. POTTER: This year we will fill all of the authorized equipment and add 30 additional locomotives.

Mr. WARRINGTON: Then, in spite of the increased capacity in your locomotives, you will have to do what you have just stated because of the increase of traffic. Is that right?

Mr. POTTER: Partly on account of the increase in the amount of traffic and partly on account of the demands of the service in requiring faster trains, faster service, which will not permit of the locomotives being loaded to their full capacity.

Mr. WARRINGTON: What is the increase in tonnage per
1224 train by reason of this heavy equipemnt you have described and to which you have changed?

Mr. POTTER: Do you mean in the lading of the train, or the total train?

Mr. WARRINGTON: Well, I think I mean in the lading. I do not know that I understand your words. I mean in the live weight as distinguished from the dead weight, is that what you mean?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Well, then, I mean in the lading?

Mr. COLSTON: You mean the thing carried.

Mr. WARRINGTON: Yes sir.

Mr. POTTER: Under the same conditions with the same kind of cars and the same loading per car, the increase in the tonnage the locomotive is able to haul would be a little less than proportionate to the increase of the tractive power.

Mr. WARRINGTON: Then it would be about 65 per cent., as you gave it a while ago?

Mr. POTTER: Now, it would not probably be more than 60 per cent.

Mr. WARRINGTON: Suppose it were in heavier cars, that is, the weight of the cars was increased and, I mean, their con-
1225 struction improved to correspond with the improved locomotive.

Mr. POTTER: If the weight of the car was increased under the same conditions you would not be able to haul as much live load.

Mr. WARRINGTON: I mean the capacity of the car; that is what I allude to.

Mr. POTTER: If in traffic whereby the car could be loaded to the capacity, then the increase in the load would be nearly proportionate with the increase in the tractive power of the engine.

Mr. WARRINGTON: Now, I fell into an error there, I think, a moment ago, which I am going to get you to correct, if you will.

Mr. MATTHEWS: You mean it will be nearer 65 per cent. than the other?

Mr. POTTER: No.

Mr. MATTHEWS: You said the other was about 60 per cent.

Mr. POTTER: Yes sir. The reason it would not be 65 per cent. is that your engine is increased in weight and you have to take care of that in the tractive power, and that probably takes off 5 per cent.

Mr. MATTHEWS: It would be nearer 65 per cent. than the 60 you gave awhile ago?

1226 Mr. POTTER: Yes sir.

The CHAIRMAN: Mr. Warrington: I do not desire to limit or direct your inquiry, but it occurs to me whether you would not get a more inclusive and valuable fact by asking what the experience had been in increasing the actual tons in a train.

Mr. MAXWELL: We are going to show all that, if your honors please. We have the figures, percentages and everything of that sort, to be disclosed.

The CHAIRMAN: That was the point with me. He seems to be getting at the theoretical possibility, which is one thing and the actual experience is another thing.

Mr. WARRINGTON: Well, I will adopt that suggestion.

The CHAIRMAN: As I say, I do not care to limit or direct your inquiry.

Mr. MAXWELL: If it will be of any assistance to Mr. Warrington, we expect to produce all those figures.

Mr. WARRINGTON: I was wishing to ask a question or two if you will permit me. I fell into one error and would like to have that corrected—when I spoke of increasing the weight of those new cars. That is not what is really done, is it? You can increase their
1227 capacity without increasing their dead weight correspondingly. Is not that true?

Mr. POTTER: Yes sir, literally as you put it.

Mr. WARRINGTON: Now, I want to ask you what part of the road do you know most about—west of Pittsburg or east of Pittsburg?

Mr. POTTER: West of Pittsburg.

Mr. WARRINGTON: And what lines—both the Southwest and Northwest systems?

Mr. POTTER: The Northwest more particularly.

Mr. WARRINGTON: Now, the Northwest system is the one which goes to Chicago?

Mr. POTTER: Yes sir; by way of Fort Wayne.

Mr. WARRINGTON: Yes, it is the old Pittsburg, Fort Wayne and Chicago.

Mr. POTTER: Yes sir.

Mr. WARRINGTON: You have been making great improvements over your Northwest lines, have you not, by increasing the capacity of bridges, the weight of rails, reducing grades and curves, and increasing and improving the equipment—I mean your company has?

Mr. POTTER: We have done something in that line, yes sir.

Mr. WARRINGTON: Well, they have done a great deal in that line, have they not?

Mr. POTTER: Well, that depends a great deal on how it is measured.

1228 Mr. WARRINGTON: Well, I do not want to go too much into detail. You have made large improvements in the lines I have suggested?

Mr. POTTER: We have made some improvements, yes sir.

Mr. WARRINGTON: Now, what has been your experience as to the increased tonnage per train or per car that you have accomplished by these improvements?

Mr. POTTER: I cannot give you the figures.

Mr. WARRINGTON: Well, is it because you do not remember and want to refresh your memory? Have you got anything you can refresh your memory from.

Mr. POTTER: I have not anything with me that I can refresh my memory from.

Mr. WARRINGTON: Can you approximate so as to really give any information to the court on that line—I do not think it is useful to get you merely to guess.

Mr. MAXWELL: We expect to produce the actual figures.

Mr. COLSTON: I do not know, but it seems to me that Mr. Potter would have exhausted the limit by this time and any further forcing of him would require him to go into the realm of guessing, and might be misleading. For that reason, I object for my client.

The CHAIRMAN: We think Mr. Warrington has the right to
1229 ask the question.

Mr. WARRINGTON: I will ask to have the question repeated.

The stenographer repeated the question as follows:

"Mr. WARRINGTON: Can you approximate so as to give any information to the court on that line—I do not think it is useful to get you merely to guess?"

Mr. POTTER: That is, the increase in loading due to improvements in engines, bridges, reduction in curvature, grades etc.?

Mr. WARRINGTON: Yes sir; and increased capacity of the cars.

Mr. POTTER: It embraces entirely too much. There have been a great many other things that entered into what improvements have been made and it would be very hard to separate them.

Mr. WARRINGTON: What other improvements have been made that would bear on that question? You can tell us that?

Mr. POTTER: Better method of operation; a better system.

Mr. WARRINGTON: What do you mean by "better method of operation?"

Mr. POTTER: Well, improvements in the locomotives and cars, better education of the men, engineers, firemen and trainmen, all help to produce such economies as are effected.

1230 Mr. WARRINGTON: Can you think of any more improvements?

Mr. POTTER: No, I guess that covers them all with what you enumerated.

Mr. WARRINGTON: Now, take into consideration what I enumerated and what you have kindly added and tell me what the practical saving or economy has been as described by increase in tonnage per train or per car mile?

Mr. POOTTER: I could not give you the figures and I would not undertake to approximate it.

Mr. WARRINGTON: Could you not give me the percentage?

Mr. POTTER: No sir.

Mr. WARRINGTON: It is a thing that you can easily familiarize yourself with. All you have to do would be to refresh your memory, would it not?

Mr. POTTER: Yes, sir; I can obtain the information, I think, if necessary.

Mr. WARRINGTON: Now, you are the Superintendent of Motive Power—is that it?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Is there any one whose business it is in your system to be more familiar with that than you?

Mr. POTTER: No, probably not.

1231 Mr. WARRINGTON: Your whole object is in fulfilling your office to pursue the best methods and most improved plans for diminishing the cost per ton per mile of freight. Is not that it?

Mr. POTTER: So far as it is affected by the efficiency and good design of the quipment, yes sir.

Mr. WARRINGTON: And you are working in that all the time?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: But now you cannot tell me what you have accomplished?

Mr. POTTER: I do not recollect the figures, no.

Mr. WARRINGTON: You cannot tell the court the percentage?

Mr. POTTER: No.

Mr. WARRINGTON: Have you made a report on that subject to your superior?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Have you got one of your reports with you?

Mr. POTTER: Not with me, no.

Mr. WARRINGTON: Now, I am not going to take up these other exhibits with any detail. I simply want to ask how far there is any correspondence. Are the dates of the years mentioned, say, in ex-
1232 hibits 21, 22, 23, 24 and 25 the same as you have said of Exhibit 20—that is, the date in each year at which you intend the price stated to apply?

Mr. POTTER (referring to Exhibit No. 22): No, the prices on Exhibit No. 22 are those in effect in the month of May, 1899 and the corresponding month of the former years.

Mr. COLSTON: What is that exhibit about?

Mr. POTTER: The prices of material.

Mr. WARRINGTON: When you gave the contract prices, as I think you said you did in exhibit No. 21, of freight cars rebuilt, you said that you had estimated a portion at prices which were entered into at some other time. Now, when were those contracts entered into, according to which you made estimates January 1st, 1900?

Mr. POTTER: The estimates were made on exhibit No. 23—the cars to be built to fill vacant numbers. Those on exhibit 21 are actual.

Mr. WARRINGTON: Now, on No. 23 the estimate was made. As of what date did you take the prices for the estimate?

Mr. POTTER: About March, I think.

Mr. WARRINGTON: Has there not been a reduction since March?

Mr. POTTER: Some; not a great deal in car material.

1233 Mr. WARRINGTON: There has been a considerable reduction in car material since January 1st, has there not?

Mr. POTTER: I do not think it has been very great. There has been somewhat of a reduction.

Mr. WARRINGTON: Can you approximate by percentage?

Mr. POTTER: On an average probably between 5 and 10 per cent.

Mr. WARRINGTON: Now, is that from any study you have made of the subject?

Mr. POTTER: No, only from my hearing from time to time some reduction of price of certain material.

Mr. WARRINGTON: Is any one of these exhibits in your handwriting?

Mr. POTTER: No sir.

Mr. WARRINGTON: Did you furnish the prices named in any one of them to the person that did write them?

Mr. POTTER: No sir.

Mr. WARRINGTON: You say no?

Mr. POTTER: May I amplify that answer?

Mr. WARRINGTON: Oh, yes, you may make an explanation.

Mr. POTTER: I did not give them to him for the purpose of writing them down.

Mr. WARRINGTON: Did you give them to him at all?

1234 Mr. POTTER: Yes, sir; when I made the contracts for the locomotives I advised the party who made up these statements.

Mr. WARRINGTON: You mean at that time?

Mr. POTTER: Yes sir; and made it a matter of record in the office

so that he could go to the record and get the information from which to make up these statements.

Mr. WARRINGTON: Then, the final test of these is whether or not he took them off correctly. You do not know whether he did or not?

Mr. POTTER: I checked back some of them and know them to be correct.

Mr. WARRINGTON: But not all of them. Did you not get prices on exhibit No. 22 from your purchasing agent?

Mr. POTTER: Those prices were gotten from our shops, from two of the shops, one on each system and checked one against the other.

Mr. WARRINGTON: Why did you not go back farther with these statements given in Exhibits 20 to 25?

Mr. POTTER: I did not think it was necessary as I felt that they showed a sufficient increase in the cost of supplies and equipment to answer the purpose.

1235 Mr. WARRINGTON: Well, then, you went back to a time when prices were low all over the country, did you not? The turn had not actually begun substantially on the 1st of 1898. Now, is not that true?

Mr. POTTER: I believe the increase commenced in the year 1898 sometime.

Mr. WARRINGTON: Well, there was no substantial increase in 1898, was there?

Mr. POTTER: Not until probably toward the latter end of the year.

Mr. WARRINGTON: Did it come before 1899?

Mr. POTTER: I believe it did. I believe the advance commenced in 1898.

Mr. WARRINGTON: But in a very small degree. Is not that so?

Mr. POTTER: No, I believe there was quite a sharp advance.

Mr. WARRINGTON: Take No. 20. A locomotive in January, 1899, cost just about the same as it did in 1898. Indeed, according to this it cost one hundred and some dollars less.

Mr. POTTER: Yes sir; that is explained by the fact that the 1898 order was the first of that type of engine and that embraces
1236 the cost of patterns, drawings and other expenses the manufacturer was put to in building the first lot of engines that would not be incident to the second lot.

Mr. WARRINGTON: I wish to ask you another thing. Do you mean, referring to Exhibit 24, that the steel rails there mentioned were bought in 1900, or were those steel rails you had on hand, the price of which you estimated?

Mr. POTTER: Those were rails bought for use in the year 1900. They have not all been delivered yet.

Mr. MATTHEWS: When were they bought?

Mr. POTTER: Contracted for the last part of last year or the early part of this year.

Mr. WARRINGTON: You do not know which. Were they not contracted for before the rails began to fall?

Mr. POTTER: Oh, yes sir.

Mr. WARRINGTON: What can such rails be bought for now?

Mr. POTTER: I do not recollect——

Mr. WARRINGTON: I refer now—to the end that there may be no mistake between us later—I refer to the 40,000 tons of rails at $33, mentioned in Exhibit 24. What can those rails be bought for now?

1237 Mr. POTTER: I do not recollect what the price of rails is now.

Mr. WARRINGTON: Can you not approximate? Do you not know?

Mr. POTTER: Probably about $26.

Mr. WARRINGTON: Can they not be bought for $24?

Mr. POTTER: I have not seen any such price as that.

Mr. WARRINGTON: Does it make any difference what size or weight rails they are?

Mr. POTTER: Not within certain limits. I think the price is the same from 68 up to 85 and 100 pound rails.

Mr. WARRINGTON: When were these rails contracted for in 1899 and 1898?

Mr. POTTER: About the same time of year as those for 1900; that is, the latter part of the year before or the early part of the year in question.

Mr. WARRINGTON: Take those for 1898, were not they contracted for in 1897?

Mr. POTTER: I could not say; possibly the latter part of the year.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: In Exhibit No. 22, where you say you compared the price in May of each year, was there any purpose in taking the month of May for comparison?

Mr. POTTER: No, those were the last prices we had when

1238 we worked this up?

Mr. MAXWELL: May, 1900, was the last month you had and you compared it with the same month in preceding years?

Mr. POTTER: Yes sir.

Mr. MAXWELL: Was there any other purpose?

Mr. POTTER: No, only to make it fairly comparable.

Mr. MAXWELL: Is there any particular season of the year when it is necessary for your roads to make contracts for rails and locomotives for the ensuing year?

Mr. POTTER: No; it varies so far as locomotives are concerned. The rails, I believe they make them always in the latter part of the year before or the early part of the year they are to be used.

Mr. MAXWELL: Does your company build locomotives or do you buy locomotives?

Mr. POTTER: We buy our locomotives and have for several years.

Mr. WARRINGTON: Where?

Mr. POTTER: From the locomotive builders and also from the Altoona shops.

Mr. WARRINGTON: Your own shops?

Mr. POTTER: No, the shops east of Pittsburg.

Mr. WARRINGTON: That company is the parent company, is it not?

1239 Mr. POTTER: It might be so called.

Mr. MAXWELL: Was there material difference in the price of locomotives and equipment between October and November, 1899, and January, 1900?

Mr. POTTER: No, I think not.

Mr. MAXWELL: Now, when you replace the lighter equipment with the heavier and more effective, what becomes of the lighter?

Mr. POTTER: We sell it or cut it up.

Mr. MAXWELL: By cutting it up what do you mean? Destroy it?

Mr. POTTER: Put it in the scrap pile.

Mr. MAXWELL: Are you able to say what, if any, effect this heavy equipment has on the wear and tear of track and bridges?

Mr. POTTER: It is quite noticeable. It has been quite noticeable, and has made it necessary to increase the work on the track and to renew some of the bridges with stronger ones and to generally put the track and keep it in better condition.

Mr. MAXWELL: Well, does this heavy equipment have any, and if so, what effect upon the cost of maintaining the equipment?

Mr. POTTER: The cost of maintaining the equipment is considerably increased on account of the cars being larger and the

1240 wear more rapid.

Mr. MAXWELL: That is all.

Mr. COLSTON: I want to ask a question. In these so-called economies, you have not been able to figure the effect of the additional wear and tear on your rails and track-bed and your bridges, have you, to make allowance for that—to make allowance for that by any definite percentage?

Mr. POTTER: No, sir, I have no figures that would indicate that, although from what I can learn it is quite appreciable.

Mr. COLSTON: There was a statement that you made that I did not get. Did you say that the difference in tractive power between the engines you described as being of type H-4, the ones that are now building, and the engines of class R, which was the class in use in 1890 was 65 per cent.?

Mr. POTTER: No, of the engines weighing 108,000 pounds, the class S, as we called them at that time.

Mr. COLSTON: What is the difference in tractive power between the type known as H-4 and the type known as Class R?

Mr. POTTER: That would be about 58 to 60 per cent.

Mr. COLSTON: Well, your whole outfit of freight engines that you are using now are not of this class H-4, are they?

1241 Mr. POTTER: Oh, no. Many of the old R's and S's are still in service.

Mr. COLSTON: So you have not got the benefit of any supposed economy that is to come out of the H-4 class fully, have you?

Mr. POTTER: Only partially.

Mr. COLSTON: Another question——

Mr. WARRINGTON: Are you cross examining him Mr. Colston. If you are not, I wish you would let him testify a little, instead of your doing it, by putting the questions in the ordinary way.

Mr. COLSTON: Mr. Potter; did I understand you to say that the

increased capacity of the freight cars was obtained without increasing the weight of those cars? Can you increase the capacity of a car without increasing its weight?

Mr. POTTER: No. To increase the capacity you must increase its weight, but not in the same ratio necessarily as the capacity is increased.

Mr. COLSTON: Could you give us a correct idea of the increase of weight that the engine has to haul between this new equipment and the old equipment that was hauled with the lighter engine?

Mr. POTTER: Take the case of the box car. For the same
1242 size box, the same length, width and height, the weight is increased about four to five thousand pounds when the capacity is increased from sixty to eighty thousand pounds.

Mr. COLSTON: That is all.

Mr. WARRINGTON: You say that increasing the weight of a box car four thousand pounds increases the capacity sixty?

Mr. POTTER: No; it increases it twenty.

Mr. WARRINGTON: You have said that that applies to a case where you did not increase the dimensions of the car body?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: Well, is that the best way to get increased capacity?

Mr. POTTER: There were reasons why we did not care to increase the length of that particular type of car, but it was desirable to increase its carrying capacity, because it is used at times for certain commodities where the 80,000 pounds could be gotten into it.

Mr. WARRINGTON: Then, that was an exception to the rule?

Mr. POTTER: No.

Mr. WARRINGTON: What was your rule of increasing capacity? Was it to change the dimensions of the car as well as its weight?

1243 Mr. POTTER: Cars of a certain kind—gondola cars, for instance?

Mr. WARRINGTON: What is the ratio of increase of capacity in that class of cars?

Mr. POTTER: Well, to take the extreme case, the steel car has a capacity of 100,000 pounds and weighs about 40,000 pounds.

Mr. WARRINGTON: Now, what is the increase in weight?

Mr. POTTER: While the wooden car used for the same purpose carried about 70,000 pounds and weighed 36,000 pounds, about 36,000 pounds; but the steel car costs a great deal more money.

Mr. WARRINGTON: I want to ask you just two questions on that. What is the weight of a car which has a capacity of 30,000 pounds?

Mr. POTTER: I do not know that we have any of those. The box cars, as I recollect it, weighed about 24,000 and the gondolas about 20,000—that is a 15 ton car.

Mr. WARRINGTON: Now, what does a car weigh—take a wooden or steel car, or both, and give each, of 80,000 pounds capacity.

Mr. POTTER: About 33,000 or 34,000 pounds, a box car.

Mr. WARRINGTON: Yes?

1244 Mr. POTTER: 33,000 or 34,000 pounds.

Mr. WARRINGTON: Is that a wooden car?

Mr. POTTER: A wooden car, yes sir.

Mr. WARRINGTON: The reason that you put parts of locomotives of light weight in the scrap pile, or cut them up, is because they have ceased to perform the service required in the economic operation of your roads, is it not?

Mr. POTTER: Yes sir; secondarily, and primarily because they are worn out.

Mr. WARRINGTON: Then, when you answered Mr. Maxwell, you had two reasons for saying the locomotives went to the scrap pile; one was that they were too light and the other was that they were worn out. Is that it?

Mr. POTTER: Too light and worn out, yes sir.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: What are these steel cars used for?

Mr. POTTER: For transporting coal, ore, and lime stone principally.

Mr. MAXWELL: That is all.

Mr. WARRINGTON: I would like for you to give me one of your reports, if you will?

Mr. POTTER: What report do you want?

1245 Mr. WARRINGTON: Last year and the year before.

Mr. POTTER: Of what?

Mr. WARRINGTON: Whatever report you make to whatever officer you make it.

Mr. POTTER: Well, I will see if I can get one.

The CHAIRMAN: Are you asking him to furnish that for the record in this case?

Mr. WARRINGTON: Yes, your honor, if it is pertinent.

The CHAIRMAN: Let us know what he is to furnish.

Mr. WARRINGTON: His report for last year and the year before.

The CHAIRMAN: His report as superintendent of motive power of the lines west of Pittsburg, to whom?

Mr. WARRINGTON: I will ask him to whom he reports.

Mr. POTTER: To the general manager.

Mr. WARRINGTON: What is his name.

Mr. POTTER: L. F. Loree.

Mr. WARRINGTON: Was he so in both those years?

Mr. POTTER: Yes sir.

Mr. WARRINGTON: How often do you make those reports.

Mr. POTTER: I make a monthly report. You have reference to the reports that will show the increase in the tons per train?

1246 Mr. WARRINGTON: Yes sir; and your train performances as well. I want the reports you made to him, if you will let me have them.

Mr. POTTER: I suppose Mr. Maxwell will instruct me about that.

The CHAIRMAN: Is this a printed document?

Mr. POTTER: No sir.

Mr. WARRINGTON: Are none of your reports in print?

Mr. POTTER: No, they are in hectograph form.

Mr. WARRINGTON: I ask for their production.

The CHAIRMAN: He says he makes a monthly report to their

general manager. Do you want copies of his monthly reports as superintendent of motive power to the general manager—for what period?

Mr. WARRINGTON: I will say the years 1898 and 1899.

The CHAIRMAN: That is 24 documents to add to this record. Of course if it is material and will throw any light on the case or any aspect of it, that is a sufficient reason.

Mr. WARRINGTON: I will not say that I know it will. I cannot say that. I have never seen them. I am simply asking their production to the end that we may ascertain, and of course in getting them they will be common property in the case and they can
1247 offer them if they are competent for them to offer as well as myself. I think those are papers that might, one would suppose, throw light on some of the questions he is testifying to here in the exhibits that have been offered as well as on cross examination.

The CHAIRMAN: I have some difficulty in seeing just now, Mr. Warrington, how the contents of the documents you now refer to have any relations to the figures on these exhibits, which are figures of cost.

Mr. WARRINGTON: I stand corrected about that. I did not think for the moment. He did not give prices, of course. What I am after is to see what they show as to rate per ton per mile cost per ton per mile tonnage per train mile or per car mile—in whatever form those things are given.

The CHAIRMAN: That is right, of course, and that you are entitled to. But are his reports to the general manager the right documents to ask for? Of course, you must bear in mind that I am speaking with reference to the statement of counsel for the defendants that they will show exactly what the facts are in those regards.

Mr. MAXWELL: I suppose this general superintendent of motive power must make scores of reports to the general manager referring to all sorts of things.

1248 Mr. POTTER: I cannot furnish the cost per ton per mile. I make no report of that kind.

Mr. WARRINGTON: What do you report.

Mr. POTTER: My reports show the number of tons per train, the average tons per car, coal per car mile, cost of locomotive repairs and car repairs, both passenger and freight, per mile; cost of fuel per hundred miles, per car mile etc.

Mr. WARRINGTON: Do you show the performances of locomotives per mile.

Mr. POTTER: The coal used per ton per mile and per car mile or per hundred engine miles. It shows the performance. The average train is shown.

The CHAIRMAN: That all goes to the question of cost of moving traffic does it?

Mr. WARRINGTON: Yes sir.

The CHAIRMAN: And of course it is part of your case to show that cost is less than it was ten years ago. Cannot you get right at that without these details.

Mr. MAXWELL: Yes sir; we are going to furnish all that.

The CHAIRMAN: Of course, Mr. Warrington, you are not bound by the facts they show in that regard. I am only suggesting now that at least your requirement that his reports to the general
1249 manager be furnished—those reports must cover a good many subjects which should not be required until you see later in the case whether you really want them or not.

Mr. WARRINGTON: Then I will ask that he be not excused until we read the others.

The CHAIRMAN: We will put it this way: If it appears necessary or material in any aspect of this case to show any facts which appear to be contained in his reports to the general manager, we will see that they are produced, whether the witness is here or not.

Mr. MAXWELL: Yes sir; anything we have that bears on the subject, you shall have.

The CHAIRMAN: If there are no further questions to be asked Mr. Potter he will be excused.

The witness was excused.

Mr. MAXWELL: Before I forget it, I would like to offer page 25 of the annual report of the Baltimore & Ohio Railroad Company for the year ending June 30, 1899, which has a bearing upon the two pages the plaintiff offered. He did not offer page 25. I want page 25 to go in.

The CHAIRMAN: If there is no objection, the annual re-
1250 ports of the defendant carriers to this Commission may be regarded as in evidence—I mean with leave to either party to refer to any fact that may appear in them.

Mr. WARRINGTON: We should like to have them.

Mr. MAXWELL: Well, of course, I suppose we will be notified what is to be relied upon at some time and it might possibly be—I do not know what contingency might arise—it might be that something would require some testimony, that it was said that such and such a thing was relied upon, and it may be necessary to have some evidence; but putting in all the reports *en masse* for all these railroads for a good many years makes an immense amount of testimony, the particular bearing of which we will not know until our attention is called to it.

The CHAIRMAN: It may not be necessary to make any reference to those reports, and certainly if any reference is made to them or if they are used in any way and that use appears to you misleading and different from what would be justified in a proper explanation, you will be given every opportunity to make explanation, because, generally speaking, what we want to get at is the truth about this thing. It is a matter of public interest. It is not
1251–1277 limited to the peculiar interest of these particular parties, and anything that establishes the truth ought to be here; and we do not want anything here which would lead to a wrongful inference, no matter in whose favor it is.

* * * * * * *

1278 F. D. CASANAVE, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Mr. MAXWELL: What is your business?

Mr. CASANAVE: I am general superintendent of motive power of the Pennsylvania Railroad Company.

Mr. MAXWELL: What are your duties as superintendent of motive power?

Mr. CASANAVE: I have charge of the construction, maintenance and repair of the equipment and rolling stock.

Mr. MAXWELL: Do you reside at Altoona?

Mr. CASANAVE: I reside at Altoona, yes sir.

Mr. MAXWELL: How long have you held that position?

Mr. CASANAVE: Since 1893.

Mr. MAXWELL: What experience in that line, if any, did you have prior to that time?

Mr. CASANAVE: I was assistant master mechanic of the Altoona shops from 1876 to 1881; master mechanic of the Fort Wayne shops 5 years after; then superintendent of motive power of the Northwest system, of the lines west of Pittsburg, until 1893.

Mr. MAXWELL: That was at Ft. Wayne?

Mr. CASANAVE: That was at Ft. Wayne.

1279 Mr. MAXWELL: Then you came back to Altoona?

Mr. CASANAVE: Then I came back to Altoona.

Mr. MAXWELL: What methods do you have of keeping your records of construction, repair and maintenance of your equipment?

Mr. CASANAVE: The shops at which the work is done, we report the cost of labor and material expended for repairs or construction; that cost is returned to my department, where it is compiled and reported to the general manager.

Mr. MAXWELL: I will ask you whether you have made certain statements bearing upon the comparative cost of equipment and material entering into the same for the year 1900 and preceding years?

Mr. CASANAVE: I have.

Mr. MAXWELL: I will ask you whether the paper which I now hand you is one of the papers which you have had prepared?

Mr. CASANAVE: It is.

Mr. MAXWELL: And whether it is correct?

Mr. CASANAVE: It is correct.

Mr. MAXWELL: We offer it in evidence.

The same is hereto annexed and marked Exhibit No. 26, Casanave.

Mr. WARRINGTON: I take it, from what was said this morning, that we are going ahead with these papers.

1280 The CHAIRMAN: You appreciate the situation as well as we?

Mr. WARRINGTON: I do.

The CHAIRMAN: The papers themselves are not proof, but the witness could take the paper in his hand and answer all the questions based on it. If it does not prejudice your rights or tend to any

wrong impression of the facts, it will surely save time to take the testimony in the way it is offered.

Mr. WARRINGTON: It only puts me in this plight of having to be the one to detain the Commission. I can find nothing out about them unless I ask about them.

The CHAIRMAN: Surely not. You will not be considered as trespassing on our time by cross examining as thoroughly as you choose.

Mr. MAXWELL: I will state, instead of reading all this, in a general way what it is for the benefit of the Commission and my colleagues and also my learned adversary. This is Exhibit No. 26. It is headed "Cost per unit of the principal items of material used in freight construction on the Pennsylvania Railroad." Then follow a list of items—yellow pine, barn pine, striking plates, wheels, metallic paint &c., and the prices for 1898, 1899 and 1900 for each of those items; then in another column, percentage of increase
1281 for 1900 over 1898 and in another column over 1899; and these percentages of increase run, as I glance my eye over this paper, from 16.2 per cent to 194.7.

Com'r CLEMENTS: What was that last one on?

Mr. MAXWELL: 194.7 per cent. was on steel axles, the increased per cent. for 1900 over 1898; and the lowest, 16.2 per cent. was the percentage of increase in 1900 over 1898 and 1899 for oak. Nails, screws, steel bolsters and iron pipe are here.

The CHAIRMAN: Does that mean that steel axles cost three times as much now as in 1898 or nearly that?

Mr. CASANAVE: Yes, your honor.

Mr. MAXWELL: Now, the second sheet of this exhibit represents what in the figures and amounts given there?

Mr. CASANAVE: It represents the increased cost of cars built in 1900 over what they cost during the years 1898 and 1899.

Mr. MAXWELL: What cars?

Mr. CASANAVE: Various classes of cars—box cars, gondola cars and flat cars.

Mr. MAXWELL: Did anybody build those cars?

Mr. CASANAVE: Some of these were built at outside shops and some at our own shops.

1282 Mr. MAXWELL: How do you get the number of cars you put down there in that schedule? Is it an estimated number or an actual number?

Mr. CASANAVE: This is the actual number of cars built.

Mr. MAXWELL: In the year 1900?

Mr. CASANAVE: In 1898, 1899 and contracted for during the year 1900—already contracted for during the year 1900.

The CHAIRMAN: You mean built and purchased.

Mr. CASANAVE: Built and purchased.

Mr. MAXWELL: And the purpose is to show the actual cost of the cars you have actually built or contracted for in the year 1900 as compared with the actual cost of cars in 1898 and 1899, is it?

Mr. CASANAVE: Yes sir; that is the purpose of the statement.

Mr. MAXWELL: In the column for 1898 and 1899, have you put

opposite each class of cars the actual cost to you of the actual cars you purchased or built during those two years?

Mr. WARRINGTON: Why do you not ask him to describe that?

Mr. MAXWELL: Because he has described it.

1283 Mr. WARRINGTON: Then, it is not necessary to repeat it.

Mr. MAXWELL: It would not be if I read each item, but it is a convenient way.

Mr. WARRINGTON: Well, I do not think it is necessary for you to lead your witness?

Mr. MAXWELL: Well, we will take all the time necessary. Will you please state what the figure $588.52 in the column for the year 1898 opposite "Box cars, X-H," represents?

Mr. CASANAVE: It represents the cost of that class of car in 1898.

Mr. MAXWELL: Of how many cars of that class?

Mr. CASANAVE: I can not tell you how many of that class. I did not make the statement in that manner.

Mr. MAXWELL: How many cars does $588.52 represent the cost of?

Mr. CASANAVE: One car.

Mr. MAXWELL: What does $520.78 in the line immediately following represent?

Mr. CASANAVE: The cost of one car of the same class in 1899.

Mr. MAXWELL: What does $590.99 further down in that same column opposite "box cars, Clas- X-H," represent?

1284 Mr. CASANAVE: $879. is the cost of the car as contracted for during the year 1900.

Mr. MAXWELL: How many cars?

Mr. CASANAVE: The cost of one car.

Mr. MAXWELL: Did you contract for one car?

Mr. CASANAVE: No sir.

The CHAIRMAN: Is this the average?

Mr. CASANAVE: The average for box cars contracted for this year already at outside shops. If you would like to have the number of cars, I can get the information.

The CHAIRMAN: In all cases have you taken the average of the cars actually made or purchased or contracted for?

Mr. CASANAVE: I have taken both. In that statement is shown the average cost of the car as contracted for at outside shops, and the cars that they built, or contracted for at our own shops.

The CHAIRMAN: In each case it is the average of all the transactions for that particular time for the year?

Mr. CASANAVE: Yes sir; your honor.

Mr. MAXWELL: Then, I suppose, if your honors please, I would be justified in the statement that this second page shows with respect to these kinds of cars built at outside shops the average cost

1285 of each car, of each class, for 1898, 1899 and 1900 and the percentage of increase for 1900 over 1898 and 1899 for the same car; and that runs (referring to paper)—the lowest percentage was 39.1 per cent., being an increase in 1900 over 1899 for gondolas class G-I, and the highest is 52.8, being the increase in 1900 over 1898 of the same car. And then follows a like statement with reference to eight kinds of cars built at the Altoona shops. The lowest

erage that I see there is an increase of 35 per cent. in 1900 over 98 and 1899. That is in the case of refrigerators, class E-D. The ghest I notice is 44 per cent., which was an increase in 1900 over 98 of gondolas, Class G-I. Now, will you please tell us where you t your figures for the third page of this statement. It seems to be sed on 2400 cars. Where do you get that figure?

Mr. CASANAVE: 2400 cars are to be rebuilt this year to fill vacant mbers in the equipment. A proportion of the material to be used building these cars has been already contracted for and if the cost the material, all of it, remains at the same price that it was two or three weeks ago when we made this statement, the cost of 286 building the 2400 cars would be $489,000 more or 39.1 per cent. greater than it would have been in 1898 at the prices en ruling.

Mr. MAXWELL: Was there any substantial change in prices be- veen October and November, 1899, and January, 1900?

Mr. CASANAVE: Very slight, if any. I am not competent to say uch about prices, as I do not purchase any material.

Mr. MAXWELL: How do you know the prices then.

Mr. CASANAVE: The prices of material already bought, I know.

The CHAIRMAN: That is, you know what your company has ctually paid.

Mr. CASANAVE: I know what the company has actually paid.

Mr. MAXWELL: Your statements are based on actual transactions?

Mr. CASANAVE: Actual transactions.

Mr. MAXWELL: Not speculative?

Mr. CASANAVE: No sir.

Mr. MAXWELL: I will ask you whether this paper which purports o show cost per unit of principal items of material used in locomo- ive construction on the Pennsylvania Railroad, bearing the years 900, 1899 and 1898, is correct?

Mr. CASANAVE: It is correct.

1287 Mr. MAXWELL: We will offer this in evidence.

The same is hereto annexed and marked Exhibit No. 27, Casanave.

Mr. MAXWELL: How was this statement made out?

Mr. CASANAVE: It is made up from the prices ruling at this time or within two weeks, when the statement was made, and compared with prices and the cost of materials for the years 1898 and 1899.

Mr. MAXWELL: How did you get the prices for 1898 and 1899?

Mr. CASANAVE: From our books, from actual charges to the ac- counts.

Mr. MAXWELL: Now, this statement does for the items that go into a locomotive what the other statement did for the items that go into a freight car, and it shows the prices of 1900 as compared with those of 1898 and 1899; and in a separate column the percentage of increase for 1900 over the prices for 1898 and 1899; and it runs all the way from 20 per cent., which is the lowest my eye falls on, being the percentage of increase for 1900 over 1899 for malleable iron cast- ings, up to 201.7 per cent., which is the percentage of increase in 1900 over 1898 and 1899 for bloom steel. And the second page of

this exhibit shows the cost of new locomotives built at the
1288 Pennsylvania Railroad shops of the various classes during these three years and the percentage of increase of cost of those built in 1900 over those built in 1898 and 1899, running from 25.2 per cent., which is the lowest percentage I notice, being the percentage of increase in cost during 1900 over that of 1899 for class F. L. A. freight locomotives, and the highest I see is 40.4 per cent., which is another class. This third page of this exhibit purports to show locomotive building on the program of 1900 and to put the total number at 128. What do you mean by the program of 1900?

Mr. CASANAVE: That is the number of locomotives to be rebuilt to fill vacant numbers—vacancies in equipment.

Mr. MAXWELL: During this year?

Mr. CASANAVE: During this year.

Mr. MAXWELL: And the statement shows an increased cost of those locomotives amounting to $436,283.31. How do you repair your freight cars? What arrangement or system do you have for that?

Mr. CASANAVE: Freight cars are repaired like any other equipment at the various shops of the system.

Mr. MAXWELL: I notice on the statement which I was about to call to your attention a reference to the freight car pool.

1289 Mr. CASANAVE: The "freight car pool" consists of an agreement between all the lines in the Pennsylvania system, both east and west of Pittsburg, by which cars are repaired indiscriminately, any of the equipment belonging to the individual companies at any of the shops, and the cost of repairing this equipment is prorated between the lines represented on the basis of the mileage made by the cars on each of the divisions.

The CHAIRMAN: That means that you repair a car at some shop near where the necessity for repairing arises?

Mr. CASANAVE: Yes, your honor. There is no necessity for hauling the cars a long distance to any shop or refusing to receive cars because they are not in proper condition.

Mr. MAXWELL: In view of that arrangement you divide the cost among the various railroads or divisions upon the average?

Mr. CASANAVE: Upon the mileage basis. The average cost per mile is ascertained and then each division charged with its proportion on the basis of the mileage made on its line.

Mr. MAXWELL: Then, I suppose you keep a record of those transactions in order to make those charges?

Mr. CASANAVE: Yes sir; we do.

1290 Mr. MAXWELL: Now the statement I show you purports to be a statement of those figures. Is it correct?

Mr. CASANAVE: Yes sir. That is a statement making a comparison of the increase in cost for the first five months of 1900 compared with the first five months of 1897, 1898 and 1899, and is correct?

Mr. MAXWELL: Why did you take five months?

Mr. CASANAVE: Because we could make no true comparison if we took more than five months of 1900, because we only know the expense for the first five months of 1900.

Mr. MAXWELL: And you have taken the corresponding months of the other years?

Mr. CASANAVE: Yes sir; so as to make the comparisons as far as possible.

Mr. MAXWELL: I will offer this.

The same is hereto annexed and marked Exhibit No. 28, Casanave.

Mr. MAXWELL: The first sheet shows the first five months of the year 1900 compared with the corresponding months for the years 1897, 1898, and 1899. It shows for the first five months of 1900, $4,883,089.82; on the first five months of 1897 it would be $3,674,-
331.77; therefore an increase of $1,208,758.05, or expressed
1291 in percentage of 32.9 per cent. As compared with 1898 it is an increase of $1,224,714.64, or expressed in per centage 33.5 per cent. Compared with 1899, an increase of $1,333,397.56, or, compared with 1900, an increase of 37.6 per cent. In other words, the increase has gone from 32.9 in 1897 to 37.6 in 1900. The second page seems to be the same thing expressed in a summarized form.

Mr. CASANAVE: It shows the increased cost of repairs per mile for the same years, yes sir.

The CHAIRMAN: Per mile of track or per train mile.

Mr. CASANAVE: Per car mile.

Mr. MAXWELL: Those increases for 1900 over 1897, 1898 and 1899 are, compared with 1897, an increase of 32.9; with 1898, an increase of 33.5; and as compared with 1899 an increase of 37.6 per cent. Have you got a statement of the total expenses of the maintenance of equipment for 1900 to compare it with 1897, 1898 and 1899?

Mr. CASANAVE: Yes sir.

Mr. MAXWELL: Will you please produce it?

Mr. CASANAVE (producing paper): This is a statement showing total maintenance of equipment expenses comparing five months of 1900 with the corresponding five months of 1897, 1898 and 1899, giving the increases for each year and the amounts of money
1292 involved in these increases.

Mr. MAXWELL: We will offer that in evidence.

The same is hereto annexed and marked Exhibit No. 29, Casanave.

Mr. MAXWELL: This shows an increase in the total expense of maintenance of equipment for 1900 as compared with 1897 of 14.4; with 1898 of 21.1; and with 1899 of 24.5 per cent. And in actual dollars and cents, the increased cost for the five months of 1900 over the corresponding five months of 1898 were $1,194,755; and over the corresponding five months of 1899, $1,349,875.

The CHAIRMAN: Is that a statement for the Pennsylvania Railroad proper?

Mr. CASANAVE: For the Pennsylvania Lines east of Pittsburg and Erie.

Mr. MAXWELL: Have you prepared a statement showing increase in the freight car repairs and locomotive repairs and fuel for locomotives in 1900 over the years 1897, 1898 and 1899?

Mr. CASANAVE: I have.

Mr. MAXWELL: Will you produce it.

Mr. CASANAVE (Producing paper): The statement for freight car repairs has been presented. This shows the cost of locomotive re-

pairs for the lines in question, showing the increased cost for
1293 the five months of 1900 over corresponding periods for the years 1897, 1898 and 1899; also a statement showing the increase in fuel for locomotives for the five months of 1900 over the corresponding periods for the years 1897, 1898 and 1899.

The CHAIRMAN: That is the fuel cost?

Mr. CASANAVE: That is the total fuel consumed by locomotives on the Pennsylvania Railroad.

The CHAIRMAN: Its quantity?

Mr. CASANAVE: This is the increase in cost—increase in expense.

Mr. MAXWELL: We will offer this. We will strike out this part, as it is already in.

The same is hereto annexed and marked Exhibit No. 30, Casanave.

Mr. MAXWELL: The figures shown by this, if your honors please, in the matter of locomotive repairs, shows an increase in five months of 1900 over the corresponding months of 1897 of 8.3 per cent.; over the corresponding months of 1898 of 20 per cent.; and over the corresponding months of 1899 of 17.8 per cent.; or, expressed in dollars and cents, the increase for the five months of 1900 over the corresponding months of 1898 was $184,886; over the correspond-
1294 ing months of 1899, $167,485. The cost of fuel for locomotives was for the five months of 1900, $256,960 more than for the corresponding months of 1898; and $200,918 more than for the corresponding months of 1899; or expressed in percentages, an increase of 19 per cent. over 1897; 26.7 over 1898; and 19.7 per cent. over 1899.

Com'r FIFER: Might not that be due to the increased business of the road.

Mr. MAXWELL: Largely due to that. There is no doubt of that, if your honors please. And we expect as the result of all this to show just what the percentage of operating expenses as to receipts. That is the grand test. Now, we are giving you the details of some statements. Then, we are going to give you, as near it as figures can come at it the per cent. of operating expenses to gross receipts. Now, Mr. Casanave, can you tell us whether the prices which your company has paid are general prices that other railroad companies would be obliged to pay?

Mr. WARRINGTON: Will you not just ask him in the ordinary way.

Mr. MAXWELL: I am going to ask him—or whether you are at a disadvantage or an exceptional advantage as compared with other railroads?

1295 Mr. MATTHEWS: The witness has said he did not have an acquaintance with the general prices but only with the actual cost that has been paid.

Mr. CASANAVE: I am unable to say anything about the actual cost of material. We order material, what we think we ought to have. The purchasing agent buys it and when we come to figure up the cost of material, if there has been an increase, we know it. We know whether the material has increased or decreased. Outside of that I have nothing to do with purchases and have no reason to inquire into

prices or whether they are the same or greater or less than any other railroad is paying for them.

Mr. COLSTON: Your purchasing agent purchases in the open market, does he not?

Mr. CASANAVE: Yes sir.

The CHAIRMAN: Mr. Casanave dies not assume to know any more than that so much has been paid by his company as it is reported to him when the thing is ordered.

Mr. COLSTON: They purport to be purchased in the open market.

The CHAIRMAN: Mr. Warrington, unless your cross-examination of the witness will be very brief, we will suspend here.

1296 Mr. WARRINGTON: Very well, I do not think I could get through with him this evening.

At 5 o'clock P. M. the Commission adjourned until 10 o'clock A. M. June 26, 1900.

1297 Sixth Day.

WASHINGTON, D. C., *June* 26, 1900—10 a. m.

The CHAIRMAN: Proceed, gentlemen. Is there any further direct examination of Mr. Casanave, Mr. Maxwell?

Mr. MAXWELL: No, sir.

Cross-examination:

Mr. WARRINGTON: What, if any, of the exhibits 26 to 30, both inclusive, are in your handwriting?

Mr. CASANAVE: None.

Mr. WARRINGTON: What, if any, examination have you made to see whether those figures are correctly transcribed or taken from other records?

Mr. CASANAVE: None.

Mr. WARRINGTON: You said, I believe, that you are not familiar with prices. Is that right?

Mr. CASANAVE: I stated that I am familiar with prices when they are charged to my department.

Mr. WARRINGTON: Then, do you regard yourself as able to

1298 state prices generally?

Mr. CASANAVE: Only except in so far as they apply to the statements which have been prepared.

Mr. WARRINGTON: Do you carry any of those prices in those — your memory?

Mr. CASONAVE: I am sorry to say I am unable to do so.

Mr. WARRINGTON: Have you compared the prices which are stated in any of these exhibits, or involved in any of the calculations there made in the sense that you can test their accuracy or say that they are right?

Mr. CASANAVE: Only except that those prices are compiled by my chief clerk, who is a reliable man and who cannot afford to make a mistake.

Mr. WARRINGTON: And that is all you know about it?

Mr. CASANAVE: That is all I know about it.

Mr. WARRINGTON: When he compiled them what were his sources for obtaining the information?

Mr. CASONAVE: The original returns of the amounts, or the value of the materials, made by those who had used them in the construction of cars and locomotives.

Mr. WARRINGTON: Now, you have not compared any one of these prices as he has transcribed or involved them in these exhibits, one price with another?

1299 Mr. CASANAVE: Not one.

Mr. WARRINGTON: Then so far as the accuracy of these exhibits 26 to 30 is concerned you rely entirely upon other people? Is that right?

Mr. CASANAVE: Entirely so.

Mr. WARRINGTON: Have you prepared any figures showing the tonnage per train, or per car on any of the railroads of the Pennsylvania System, and brought them here?

Mr. CASANAVE: I have such records prepared and kept for me, for my own information, every month and every year. They were not prepared for this occasion.

Mr. WARRINGTON: Are you able to carry any of those amounts or quantities in your memory?

Mr. CASANAVE: Why, some, but I have my reports here to refer to if it is desired.

Mr. WARRINGTON: What roads in the Pennsylvania System do your figures as regards tonnage cover?

Mr. CASANAVE: The lines East of Pittsburg and Erie; consisting of the Pennsylvania Railroad proper, the Philadelphia & Erie, the Northern Central, and the New York Division, Philadelphia to New York.

Mr. WARRINGTON: What plan have you adopted for fixing tonnage—what unit of measurement? Is it per mile, or per

1300 car, or per ton?

Mr. CASANAVE: Will the stenographer please read the question.

The question was repeated.

Mr. CASANAVE: Do you mean the lading which shall be given to a freight locomotive?

Mr. WARRINGTON: I will take that as we progress, but what I wish to ascertain is how you have figured in ascertaining anything in regard to tonnage. Tell the court just what you have done, what your method is in that regard.

Mr. CASANAVE: The mileage of cars is reported to my office by the general superintendent of transportation who has charge of that matter. The tonnage is reported to my office by the Auditor's department, and the locomotives in service are returned to us monthly by the various divisions operating them. When all of this information is received, it is compiled, and statements are prepared for my information, and also for that of the General Manager. I am obliged to have that done in order to check expenditures, to be able to control them, by noting what fluctuations take place. The statements are prepared in that manner.

Mr. WARRINGTON: It may be clearly stated, but I confess that I do not now understand what you get in results.

1301 Mr. CASANAVE: In results we get, in the first place, the total locomotive mileage; the mileage made with freight trains loaded; we get the average number of cars hauled per train, and the average number of tons hauled per train, and also per car.

Mr. WARRINGTON: How long have you been doing that?

Mr. CASANAVE: We have done that for many years; I cannot tell you exactly. I have only been in this position since 1893, but that information has been compiled in that manner since I have been there.

Mr. WARRINGTON: That is since 1893?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: I suppose you know from observation or otherwise that it was done before, or back of that?

Mr. CASANAVE: I presume so, yes, sir.

Mr. WARRINGTON: Is that not your best information, that the practice of doing this antedates 1893?

Mr. CASANAVE: I have no doubt of it; although I have never looked up the records to see.

Mr. WARRINGTON: Have you no knowledge of it having gone back ten years or so?

Mr. CASANAVE: I presume so.

Mr. WARRINGTON: How far back do the reports go which

1302 you have here?

Mr. CASANAVE: The reports made for my information are carried in this book (Exhibiting) together with other information and are comparisons of the months of this year with corresponding months of previous years. But in addition, I have statements here showing the changes which have taken place in the year 1899 as compared with 1898; in other words, the combined statements of the months of the years named.

Mr. WARRINGTON: 1888 and 1899 and the five months of 1900?

Mr. CASANAVE: Yes, sir; five months of 1900 as compared with five months of 1888 and 1899—or four months; I do not think I have figures later than April now.

Mr. WARRINGTON: How is it that you limited your comparisons to those months? Is it just because there were only four months to judge by of this year?

Mr. CASANAVE: Will you allow me to explain. I was not asked to prepare any information of that character in connection with the giving of testimony before this Commission. I was only asked in regard to the cost of equipment. This information is information that is prepared for me, for my own use, each month and each year, and which I carry with me all the time in order to enable me

1303 to answer any questions of my superiors as to the operations of the Motive Power Department. There are many other such figures and comparisons which were prepared for my own use, but not for any use before this Commission. I had no idea that I would be asked to testify on that point.

Mr. WARRINGTON: Do such reports reach the Commission to your

knowledge? I mean in the annual reports that your company makes to the Interstate Commerce Commission?

Mr. CASANAVE: The annual report of the General Manager includes my report in-so-far as they affect the maintainenance of the equipment of the Pennsylvania Lines.

Mr. WARRINGTON: Do you know whether he takes them up and carries them on and into his report and thence to the annual report?

Mr. CASANAVE: He carries such figures from my report as will show the operations of the Motive Power Department.

Mr. WARRINGTON: Now, have you figures showing the increase of transportation, the increase of freight that has taken place within the time covered by the exhibits 26 to 30 both inclusive?

Mr. CASANAVE: Do you mean the increase in tonnoge?

Mr. WARRINGTON: Yes, sir.

1304 Mr. CASANAVE: Yes, sir; I have, as I stated, my last annual report, which is contained in my memorandum book which I have here with me.

Mr. WARRINGTON: Mr. Casanave, if you are able to, I wish you would tell me what the tonnage per car mile or train mile was for 1898, if that is the form in which you have been keeping it.

Mr. CASANAVE: Will you allow me to refer to my memoranda?

The CHAIRMAN: Yes, sir.

Mr. CASANAVE: Will the stenographer repeat the question.

The question was repeated.

Mr. CASANAVE: We do not keep it exactly in that form.

Mr. WARRINGTON: In what form?

Mr. CAS-NAVE: We keep, first, the freight engine mileage; the freight car mileage; the tonnage mileage; the average number of cars per train, loaded basis; the average number of tons per train; the average number of tons per car; the average number of pounds of coal consumed per car mile, and the average number of pounds consumed per ton mile.

Mr. WARRINGTON: Give the average number of tons per train.

1305 The CHAIRMAN: For what year?

Mr. WARRINGTON: For 1898.

Mr. CASANAVE: The average number of tons per train in 1898 for the Pennsylvania Railroad Division was 385.111 tons.

Mr. WARRINGTON: What other divisions have you?

Mr. CASANAVE: If you will allow me, I will give the combined total of all the divisions, which will be much shorter and give the same results.

Mr. MAXWELL: All the divisions east of Pittsburg.

Mr. CAS-NAVE: Yes, sir.

Mr. WARRINGTON: I would like to have them from the Pennsylvania Division first.

The CHAIRMAN: Let us see what that division covers.

Mr. CASANAVE: It covers the main line from Pittsburg to Philadelphia only. The other lines I have here in the grand total, shows them combined in grand divisions.

Mr. WARRINGTON: What are the combined grand divisions.

Mr. CASANAVE: They are stated as the Pennsylvania Railroad Division; the——

Mr. WARRINGTON: From Pittsburg to Philadelphia?

Mr. CASANAVE: Yes, sir. Next, the United Railroads of New Jersey Division;

1306 Mr. WARRINGTON: From Philadelphia to New York?

Mr. CASANAVE: Yes, sir. The Philadelphia & Erie, from Sunbury to Erie; the Northern Central;

Mr. WARRINGTON: Where is that, the Northern Central?

Mr. CASANAVE: From Sunbury to Baltimore; and the Philadelphia, Wilmington & Baltimore, from Philadelphia to Washington.

Mr. WARRINGTON: Are the locomotives and cars used on these several divisions all of the same class.

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Where are your heavy locomotives and the cars of greatest capacity used?

Mr. CASANAVE: The cars of greatest capacity are used on all of these divisions and the locomotives of largest capacity are used on the Pennsylvania Railroad proper.

Mr. WARRINGTON: When you speak of locomotives of largest capacity, you mean of greatest drawing power, draught power, do you?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Now, give me the tonnage on the Pennsylvania Railroad Division, first. I will not prevent you from giving the others.

1307 Mr. CASANAVE: I can only give you the tonnage mileage.

Mr. WARRINGTON: You have here the average number of tons per train.

Mr. CASANAVE: That I have given you. I have just stated that for the *yrae* 1898. I said it was 385.111.

Mr. WARRINGTON: What was it in 1899?

Mr. CASANAVE: 407.472.

Mr. WARRINGTON: What increase is that?

Mr. CASANAVE: I have not figured the increase here, but I can easily do so. (After making calculation.) It is about 5 per cent.

Mr. WARRINGTON: Five per cent. in tons per train.

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: What was it in 1897?

Mr. CASANAVE: In 1897 I do not know. This is the only statement I have—1898 and 1899.

Mr. WARRINGTON: Do you know what it was in 1890?

Mr. CAS-NAVE: No, sir; not without consulting my records, which I do not have here.

Mr. WARRINGTON: What was it in 1887? Do you know?

Mr. CASANAVE: No, sir.

1308 Mr. WARRINGTON: In 1888?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: In 1889?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Any year prior to 1898 are you able to give now? No year prior to that; is that right?

Mr. CASANAVE: That is right; yes sir.

Mr. WARRINGTON: Now, you spoke of having the grand totals. I have no objections and indeed ask you to give them. The Commission will recall that this relates to all the roads of the eastern system.

Mr. CASANAVE: Do you wish the percentage of increase of tons carried per train?

Mr. WARRINGTON: Give what it was in 1898, first.

Mr. MATTHEWS: Is that the average of tons per train?

Mr. CASANAVE: Yes, sir.

Mr. MATTHEWS: How much is that?

Mr. CASANAVE: Do you want the total?

Mr. MATTHEWS: Yes, sir.

Mr. CASANAVE: 368 tons per train for 1898.

Mr. WARRINGTON: The average of all for 1898 was what?

Mr. CASANAVE: 368 as against 393 in 1899, or an increase
1309 of 7 per cent.

Mr. MATTHEWS: What is it for 1899?

Mr. CAS-NAVE: 393 tons.

Mr. COLSTON: An increase of 7 per cent.?

Mr. CASANAVE: An increase of 7 per cent.

Mr. WARRINGTON: Now, the only other figures you have, if I understand it, are for the four months of this year and corresponding times in 1899 and 1898.

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Will you give those; first, of the Pennsylvania Division?

Mr. MATTHEWS: Four months or five months?

Mr. CASANAVE: Only three months—January, February and March. The April and May figures we have not got yet. I would say that there is a great delay in receiving the tonnage figures from the Auditor. They can-ot be compiled, as they are always two or three months later than the other figures. For the Pennsylvania Railroad Division you desire the number of tons per train as compared with the corresponding figures of the former years?

Mr. WARRINGTON: Yes, sir, if that is all you can give.

1310 Mr. CASANAVE: Yes, sir; that is all.

Mr. WARRINGTON: I will take that.

Mr. CASANAVE: The number of tons per train carried in January, 1899, on the Pennsylvania Railroad Division proper was 328 tons per train. In 1900, the same month, 367 tons. There are some fractions, which I can give you if you desire them.

Mr. COLSTON: I do not think it is necessary. How much did you say?

Mr. CASANAVE: 367 tons.

Mr. WARRINGTON: Haven't you got 1898?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Only two years?

Mr. CAS-NAVE: This is a book I carry for my own personal information and use; made new every year.

Mr. WARRINGTON: Give February.

Mr. CASANAVE: The same information for February, the number of tons carried in February, 1899, was 325, and in February, 1900, 386 tons.

Mr. WARRINGTON: Give it as to all roads combined. You did not give me March. Give me that first.

Mr. CASANAVE: The number of tons carried in March, 1899,
1311 per train was 363 tons. In March, 1900, it was 403 tons.

Mr. WARRINGTON: Have you the percentage of increase figured out?

Mr. CASANAVE: No, sir.

Mr. MATTHEWS: That is the Pennsylvania Railroad Division alone?

Mr. CASANAVE: Yes, sir. The number of tons carried per train in January, 1899, on all the lines east of Pittsburg was 324 tons; in January, 1900, 360 tons. For February, 1899, 315 tons; for February, 1900, 373 tons. In March, 1899, 351 tons; in March, 1900, 387 tons.

Mr. WARRINGTON: Have you the number of tons increase—the percentage of increase?

Mr. CASANAVE: No, sir; it has not been figured out.

Mr. WARRINGTON: To what do you ascribe this increase in the average ton per train? Is it additional traffic, or is it improved methods of carrying freight?

Mr. CASANAVE: Improved methods, causing those in charge of loading cars to load more heavily, and also to the introduction of a certain number of cars of larger capacity.

Mr. WARRINGTON: Do you ascribe any of it to increase of tons of freight that have been carried over your roads as compared with previous years? In other words, has there not been an increase
1312 in traffic?

Mr. CASANAVE: Yes, sir; that I have just stated.

Mr. WARRINGTON: Well, what part of it is due to increased traffic?

Mr. CASANAVE: I am utterly unable to say, Mr. Warrington; I do not know.

Mr. WARRINGTON: May be you can help us in this way: When did the Pennsylvania Railroad System introduce the improved methods which we have spoken of here for freight carriage?

Mr. CASANAVE: The only methods I am able to testify to are the introduction of the large locomotives and cars.

Mr. WARRINGTON: When did you begin to introduce large locomotives?

Mr. CASANAVE: The first locomotives went into service about the beginning of 1899.

Mr. WARRINGTON: Why, this is a known fact, is it not, that your company has been one of the leaders in introducing heavy equipment and corresponding improvements in road-bed? Is that not so?

Mr. CASANAVE: I really cannot tell what the opinion about
1313 it is.

Mr. WARRINGTON: Well, what is the fact?

Mr. CASANAVE: As I stated to you, in so far as the introduction of heavier freight locomotives, that commenced about the beginning of 1899.

Mr. WARRINGTON: Why, do you mean to say that you had not put heavier locomotives, say, on the Pennsylvania Railroad Division, from Pittsburg to Philadelphia in 1895 up to 1898 than they had west of Pittsburg?

Mr. CASANAVE: The locomotives on the lines west of Pittsburg were about the same as those in use east of Pittsburg. A locomotive called Class R, which at that time was probably as large as any locomotive anywhere else, was in general use on both the lines east and west of Pittsburg.

Mr. WARRINGTON: When was Class H-4 introduced?

Mr. CASANAVE: They were introduced sometime in 1898 on the western lines. I do not know when they went into service.

Mr. WARRINGTON: How do they compare in draft power with Class R?

Mr. CASANAVE: In tractive power?

Mr. WARRINGTON: Tractive power is the same thing as draft power, is it not?

Mr. CASANAVE: It is the effect produced in hauling the load behind it.

1314 Mr. WARRINGTON: It is pulling power?

Mr. CASANAVE: It is pulling power; yes, sir.

Mr. WARRINGTON: I would like to have the question repeated.

The question was repeated by the stenographer, as follows:

"How do they compare in draft power with Class R?"

Mr. CASANAVE: The tractive power of Class R locomotoves is 23,040 pounds. The tractive power of H-4 is 39,700 pounds.

Mr. WARRINGTON: What other classes of freight locomotives have you that we can group them together, giving their tractive power?

Mr. CASANAVE: H-6, which is the standard modern freight locomotive of the Pennsylvania lines—its tractive power is 35,820 pounds.

Mr. WARRINGTON: That is not as great as H-4?

Mr. CASANAVE: No, sir; I may say here the reas-n is that the H-4 carries a higher steam pressure than H-6.

Mr. WARRINGTON: Have you given now all the classes of locomotives that the Pennsylvania System had in use in 1898 and 1899?

Mr. CASANAVE: The Class R was the freight engine of the
1315 Pennsylvania Railroad—the standard freight engine—until the latter part of 1898 or early part of 1899, when the H-6, which is the present heavy locomotive, was introduced.

Mr. WARRINGTON: How is the fact of increased tonnage—total tonnage—ascertained by you, say, for a given time?

Mr. CASANAVE: The tonnage is reported to my office by the General Superintendent of Transportation, who keeps those records.

Mr. WARRINGTON: Now, to advise you exactly of what I mean and what I am seeking to ascertain; if the total tonnage of one month was x, the total tonnage within your jurisdiction, and for the next month it was xy, total tonnage, you would use those totals in working out the average tons per train, would you not?

Mr. CASANAVE: Yes, sir?

Mr. WARRINGTON: Why is it you cannot tell us exactly what the increase of the total tonnage has been as distinguished from the average tons per train?

Mr. CASANAVE: We do not keep the information in that manner. We figure on the tonnage mileage, which is, as you know, the product of the ton-age and the mileage of the equipment.

1316 Mr. WARRINGTON: Does the tonnage mileage enable you to distinguish between the volume of freight which you have during one period and the volume of another period?

Mr. CASANAVE: Very accurately; yes, sir.

Mr. WARRINGTON: Give us that. I want to see what the increased tonnage is.

Mr. CASANAVE: I have not the increased tonnage; we do not keep the tonnage by itself. We have the tonnage mileage. Do you wish the total or by divisions?

Mr. WARRINGTON: Give the Pennsylvania Railroad Division.

Mr. CASANAVE: The tonnage mileage of the Pennsylvania Railroad Division for the year 1898 was 6,833,638,350 tons. For the year 1899 the total was 8,109,571,545 tons.

Mr. WARRINGTON: Have you got it for the months?

Mr. CASANAVE: I have it for the three months I have referred to.

Mr. WARRINGTON: Give it in this connection for those as compared with correspondin*f* periods.

Mr. CASANAVE: The tonnage mileage of the Pennsylvania Railroad Division for the month of January, 1899, was 640,852,696 tons.

1317 Mr. MATTHEWS: For what month?

Mr. CASANAVE: January, 1899.

Mr. WARRINGTON: You haven't it for 1898?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Go ahead.

Mr. CASANAVE: January, 1900, 737,576,781 tons.

Commissioner CLEMENTS: All of those figures have reference to moving a ton one mile?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Have you anything more for the Pennsylvania Railroad Division?

Mr. CASANAVE: February and March.

Mr. WARRINGTON: Give them.

Mr. CASANAVE: For February, 1899, 510,790,733 tons, for February, 1900, 702,504,198 tons; for the month of March, 1899, 720,667,025 tons; for the month of March, 1900, 814,622,340 tons.

Mr. WARRINGTON: Have you figured out the increase?

Mr. CASANAVE: No, sir; I have not.

Mr. WARRINGTON: Now give it on all the divisions. Give the same information for the years 1898, 1899, and 1900, as far as you go on the latter year.

1318 Mr. CASANAVE: For the year 1900, the first three months——

Mr. MATTHEWS: Are you not going to give the years 1898 and 1899 first?

Mr. CASANAVE: All right; I can do that. The total tonnage mileage for the year 1898 was 10,603,568,314 ton miles. For the year 1899, 12,484,406,344 tons one mile.

Mr. WARRINGTON: Now, for the fractional part of 1900.

Mr. CASANAVE: For the month of January, 1899, the figures were 955,795,732 tons.

Mr. COLSTON: 1899 or 1900?

Mr. CASANAVE: January, 1899. For January, 1900, it was 1,082,345,354 ton miles. For the month of February, 1899, 754,526,077 ton miles; for the month of February, 1900, 993,045,910 ton miles. For the month of March, 1899, 1,060,058,941 ton miles; for the month of March, 1900, 1,163,103,567 ton miles.

Mr. WARRINGTON: Have you figured the increase?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: You have not figured the increase?

Mr. CASANAVE: No, sir; I have not.

Mr. WARRINGTON: Now, how far back in your records does the tonnage mileage extend?

1319 Mr. CASANAVE: I could not say. Those statements are not kept in my office, but are prepared by the General Superintendent of Transportation.

Mr. WARRINGTON: How far back have they been kept in your department?

Mr. CASANAVE: We have received them for this purpose since 1893, as I stated before.

Mr. WARRINGTON: But as a matter of fact you understand they were kept before that?

Mr. CASANAVE: I presume so, but I do not know. There may have been some change in the methods.

Mr. WARRINGTON: Do you give the cost ton per mile for carrying freight?

Mr. CASANAVE: I have no information of that character. That is out of my department; it does not deal in matters of that sort.

Mr. WARRINGTON: Do you have the rate per ton per mile?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: You know those facts are given in the annual reports of your company, do you not?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Who prepares those reports on that?

1320 Mr. CASANAVE: Those statements?

Mr. WARRINGTON: Yes, sir.

Mr. CASANAVE: I judge the Comptroller does, but I do not know.

Mr. WARRINGTON: Now, turning to your Exhibit 27, I wish to ask you what are the features of difference between the old style and new style of locomotive; first, is it in diameter of boiler?

Mr. CASANAVE: In general, all of its proportions are increased.

Mr. WARRINGTON: What is the object of increasing all of its proportions?

Mr. CASANAVE: Because the locomotive is built to exert a greater force and the parts must be made correspondingly strong to resist the increased strain.

Mr. WARRINGTON: You spoke of increasing the fire box and heating surface. What does that signify in the draft power of the locomotive?

Mr. CASANAVE: I beg your pardon; I do not know that I have said anything about the heating surface. If so, I would like to have the reporter read it.

Mr. WARRINGTON: Well, if you have not, what does that
1321 signify? What does it mean?

Mr. CASANAVE: I do not understand your question.

The question is read by the stenographer.

Mr. WARRINGTON: Is it not to get greater boiler-steam pressure?

Mr. CASANAVE: The fire box has nothing to do with greater steam pressure. It is proportional to the capacity of the boiler.

Mr. WAR-INGTON: What is the ultimate object, if you can tell us? Is it to increase the boiler pressure and so exert a greater power or higher pressure upon the cylinder and drivers?

Mr. CASANAVE: The object of building these particular locomotives and making them larger was so that they would do a greater amount of work than locomotives of the past.

Mr. WARRINGTON: The object of increasing pressure is to get a greater pressure finally at the drivers?

Mr. CASANAVE: The first thing to be considered is the tractive power, which is the effect produced upon the pistons and other parts of the locomotive. In order to carry the pressure, the boiler must be made stronger proportionally in all its parts, and
1322 the other parts and other details must be correspondingly increased, in order that they may be able to bear the increased strains.

Mr. WARRINGTON: Then if you were going to make a comparison between locomotives of given types, would there be a common factor by which that comparison could be made, and, if so, would it be tractive power?

Mr. CASANAVE: It would be both tractive power and other conditions.

Mr. WARRINGTON: What are the other condition*d*?

Mr. CASANAVE: They are these: If I understand your idea right, a locomotive to carry 200 p-unds pressure, steam pressure, will have to have its parts, or many of them, increased in dimensions and in the grade of material, so that the cost of such locomotives will therefore be greater than those of smaller size. For instance, the pistons of a small locomotive were originally made of cast iron, which is a cheap material. The pistons of the present locomotives are made of cast steel, which costs two or three times as much. Many other parts of the locomotive are made of similar, or other more expensive materials for the samr reasons. In order to insure safety, the boiler material must also be of the very best,

and so on through the whole list of the parts of the locomotive.

1323 Mr. WARRINGTON: Now, will you recur to my question—if there is any way of comparing the locomotive, say, of ten years ago with the locomotive of to-day. I mean the difference between the old and new styles. Is tractive power one of the features?

Mr. CASANAVE: In so far as the power of the locomotives is concerned; yes, sir.

Mr. WARRINGTON: Then the difference in tractive power is one of the features for distinguishing the two classes?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Has the weight of a locomotive anything to do with its tractive power?

Mr. CASANAVE: It must always be proportionate to the tractive power.

Mr. WARRINGTON: How do you determine tractive power with reference to weight on the drivers?

Mr. CASANAVE: The rule generally followed by engineers is that the weight—which is the weight on the wheels of a locomotive—must be about 4½ pounds per pound of tractive power exerted.

Mr. WARRINGTON: Is it not 5?

Mr. CASANAVE: Some people may use five. I am giving you the proportions we use—four and one-half pounds to one of tractive force.

1324 Mr. WARRINGTON: Make that plain, so we will all understand.

Mr. CASANAVE: For each pound of tractive power there must be 4½ of weight on the driving-wheels of the locomotive.

Mr. WARRINGTON: That is to overcome what?

Mr. CASANAVE: To overcome the tendency of the wheels to slip. If the adhesive weight, which is the weight on the wheels, is insufficient and not proportionate to the tractive force, the locomotive would not move forward; the wheels would slip and turn around without moving forward.

Mr. WARRINGTON: Then tonnage—that is, more weight of the locomotive—is a thing to consider when you are making a comparison? Is that right?

Mr. CASANAVE: Surely; yes, sir.

Mr. WARRINGTON: Can you tell me any other feature for safe comparison?

Mr. CASANAVE: Comparison for what?

Mr. WARRINGTON: If I were going to ascertain what a locomotive on the Southern Railway made, say, ten years ago is worth to its owner in comparison with one of your locomotives and its worth to you, what other features ought I to think of for any purposes of comparison besides tractive power and weight?

1325 Mr. CASANAVE: Its condition and age.

Mr. WARRINGTON: Well, let me assume that it is a new locomotive made after the old style in the South and that its condition is as good as one of your best locomotives.

Mr. CASANAVE: I do not know of any other conditions.

Mr. WARRINGTON: You spoke of having to have better material and improved and better workmanship on the new than on the old locomotives. Why is it that a company would resort to the expense of the new in that regard? There must be some advantage of this new locomotive over the old, more than a mere difference in price. Tell the Commission what that advantage is.

Mr. CASANAVE: My idea was in designing this locomotive to enable us to haul more freight and increase the size of the trains and, if possible, by such means decrease the cost of operation.

The CHAIRMAN: Mr. Warrington, I am quite unable to perceive the relevancy of this examination, to be candid about it. The fact that they are carrying more traffic; the fact that they get an increased average of tons per train, and the fact that they are carrying cheaper all tends to support your contention, but how they brought those economies about is hardly very material.

1326 Mr. WARRINGTON: I will turn away from it now. Let me go to another feature of construction. Take Exhibit 26—freight cars. One main difference between the modern and the old style freight cars is the difference in steel truck and body bolsters?

Mr. CASANAVE: There are many other differences.

Mr. WARRINGTON: What are they?

Mr. CASANAVE: Do you wish me to state the difference between the cars of greater capacity and those of former capacity?

Mr. WARRINGTON: Well, I won't ask you to talk in detail about it. Could you give it in a line?

Mr. CASANAVE: Steel bolsters; steel trucks; malleable castings; increase of amount of material in the foundation of timbers and other parts entering into the construction of the car.

Mr. WARRINGTON: Now, that is to gain live weight capacity?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: It is to increase the net weight that you can carry?

Mr. CASANAVE: The increase in capacity is made to carry more freight per car.

1327 Mr. WARRINGTON: What is the average increase you have obtained?

Mr. CASANAVE: We have increased some cars from 60,000 to carry 80,000, and others from 60,000 pounds—coal cars I mean—to 100,000 pounds.

Mr. WARRINGTON: Take a train of ten years ago and a train of to-day, both freight trains; what is the difference in the average tons per train?

Mr. CASANAVE: I cannot say, sir. I have given you all the figures I have.

Mr. WARRINGTON: Now, you can help us some; you know something about that, don't you?

Mr. CASANAVE: I certainly do not.

Mr. WARRINGTON: You could get this information, could you not?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: It is in the books of your company, is it not?

Mr. CASANAVE: In the books of my office.

Mr. WARRINGTON: You were not asked to furnish it?

Mr. CASANAVE: No sir.

Mr. WARRINGTON: Now, when you take the question of repairs about which you were asked yesterday, of road-bed; is it not
1328 true that while there may be larger bridges and larger rails and all that requiring a state of repair may be better than the former, is that not a part of the economy you are seeking in carrying freight, per ton per mile?

Mr. CASANAVE: We are seeking that, but I do not know what economy may result from the introduction of that larger equipment.

Mr. WARRINGTON: The fact is you have reduced the cost per ton per mile?

Mr. CASANAVE: The fact is that in so far as I am able to testify here about matters with which I am familiar—that is, the cost of operation of the Motive Power Department—the introduction of large locomotives and cars has increased the cost of operation per car mile over what it was previous to the introduction of these large machines.

The CHAIRMAN: Increased it?

Mr. CASANAVE: Increased it quite largely.

The CHAIRMAN: You do not mean that it has increased in proportion to carrying capacity?

Mr. CASANAVE: No, sir; I have made no comparisons at any time in that direction. We measure in percentages of increase in cost per hundred miles from year to year and month to month.

1329 The CHAIRMAN: It is just what you said once before, that it costs more to operate large locomotives than smaller ones?

Mr. CASANAVE: I said the cost of operation or maintenance of freight cars was greater last year than the year previous and greater now in the five months of 1900 than before, per car mile.

The CHAIRMAN: That is on one of the Exhibits you introduced yesterday, I believe.

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: How is it per ton per mile?

Mr. CASANAVE: I do not know, because I do not handle any of the expenses on that basis.

Mr. WARRINGTON: When you say per car mile, you know that each car carries greater tonnage?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Then does it not follow that the cost per ton mile is reduced?

Mr. CASANAVE: It does not follow at all.

Mr. WARRINGTON: Do you know that is not true?

Mr. CASANAVE: I know it is not in so far as the expenses with which I am familiar; I don't know anything else.

1330 The CHAIRMAN: You have nothing to do with the revenue?

Mr. CASANAVE: No, sir; I know that the introduction of these locomotives and cars has proved very disastrous to the lighter cars and damaged them and has increased the cost of maintenance largely.

Commissioner CLEMENTS: That is without any comparison with or reference to what they earn?

Mr. CASANAVE: Yes, sir.

Mr. MAXWELL: That subject comes in another department and will be duly exposed to the Commission.

Mr. WARRINGTON: I will ask you if your reports, the reports of your company, for 1897, 1898, and 1899 do not show an annual reduction in cost per ton per mile?

Mr. CASANAVE: I do not know.

Mr. WARRINGTON: Do you mean you never look into the reports of your company?

Mr. CASANAVE: I may look at them when they are first received, but not with any view to memorizing any of the items, because thry are not of any interest to me. My duties are in another direction, and surely I have enough to do in looking after that.

1331 Mr. WARRINGTON: Of course if you cannot make comparisons, we will use the reports. That is the way we will do about that.

The CHAIRMAN: Mr. Warrington, understand that I have no desire to limit your cross-examination. I was trying to get at the drift of it in what I said. Let me ask Mr. Casanave a question right here. You stated that the increase in the average number of tons carried per train was due in part to a heavier loading of cars and in part to the use of cars of greater capacity.

Mr. CASANAVE: Yes, sir.

The CHAIRMAN: I did not exactly understand what you said in reply to Mr. Warrington's inquiry,—whether the increase in the average tons per train was due in part to a general increased volume of traffic. You have no figures on that of course.

Mr. CASANAVE: No, sir.

The CHAIRMAN: What is your observation or experience; does increased volume of traffic tend to increase the average number of tons carried by a train?

1332 Mr. CASANAVE: I should think it would naturally be so, that there would be greater effort in order to move the freight to load the cars more fully than otherwise.

The CHAIRMAN: You would expect that an analysis of the facts would show that, other things being equal, the equipment being the same, an increase in volume of traffic would increase the number of tons carried to the train?

Mr. CASANAVE: Yes, sir; and a further fact, that the average lading of cars has been ver- low at all times, and it is not very high. While we have cars of from 60,000 to 100,000 pounds capacity, I do not believe the average lading per car on the Pennsylvania line is much more than 18 tons per car, showing that a great many have very light, small loads.

Mr. WARRINGTON: When you take that average don't you take into consideration the empties?

Mr. CASANAVE: No; we figure that on a loaded basis.

Mr. WARRINGTON: I do not know what you mean.

Mr. CASANAVE: We take the loaded cars.

The CHAIRMAN: You exclude the hauling of empty cars.

Mr. CASANAVE: Yes, sir; we take cars actually loaded.

1333 Mr. WARRINGTON: You know it to be a fact in railroad policy that the companies are all reducing grades and curvature, increasing weight of rails and strength of bridges, and putting on heavier equipment, do you not?

Mr. CAS-NAVE: Yes, sir.

Mr. WARRINGTON: You know that that was to accommodate a greater traffic at a less cost than the old method of operation, do you not?

Mr. CASANAVE: I do not know what the policy was, but I should think it would only be that.

Mr. WARRINGTON: Now, that is being pursued throughout the country, that policy, is it not?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: The Pennsylvania Railroad Company began that how many years ago, in a marked way?

Mr. CASANAVE: I cannot say except as to locomotives and cars.

Mr. WARRINGTON: When did their policy change?

Mr. CASANAVE: About 1898.

Mr. WARRINGTON: When you speak of repairs of locomotives or road bed, whatever increase there is there, it is all in line with this policy of reducing the cost of handling freight? That is the policy, the purpose of it? Is it not?

1334 Mr. CASANAVE: As I stated before, I presume the purpose of spending more money in improvements is to receive some benefit from it.

Mr. WARRINGTON: I will ask you whether you can tell me in reference to one of your Exhibits here which relates to rails.

Mr. CASANAVE: I have not presented anything about rails.

Mr. WARRINGTON: I thought you did. Can you tell me the price of rails? Don't you know anything about that?

Mr. CASANAVE: I know nothing about it.

Mr. WARRINGTON: Don't you know approximately what rails were worth, say, in 1893?

Mr. CASANAVE: No, except I have a very dim recollection,—something like $20 a ton perhaps.

Mr. WARRINGTON: I will ask you whether they did not range from—look at your own company's report and compare it with your recollection. (Handing report to witness.)

Mr. CAS-NAVE: That might all be true.

Mr. WARRINGTON: What might all be true?

Mr. CASANAVE: That this may vary from what I said.

Mr. WARRINGTON: The price ranges from $29.00 to $45.00 a ton, does it not?

Mr. CASANAVE: This is new to me: I know nothing about rails.

1335 Mr. WARRINGTON: What I am handing to you purports to be the report of the Pennsylvania Railroad for the year ending June 30, 1893. Is it not?

Mr. CASANAVE: Then it must be true.

Mr. WARRINGTON: Then you would amend your recollection?

Mr. CASANAVE: My recollection was of such a character that I stated practically that I had no idea except in the most general way.

Mr. WARRINGTON: Can you give it to me for 1890?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Can you tell me what it was in last October, November, or December?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Can you tell me anything about the prices for October, November and December?

—. —.

Mr. WARRINGTON: Can you give me any prices for any materials — went into railroad cars or railroad construction?

Mr. CASANAVE: Yes, sir; I can give you boiler steel at 3¼ cents per pound.

Mr. WARRINGTON: When?

Mr. CASANAVE: For the last locomotives we constructed material for, in the early part of this year or the latter part of last year.

1336 Mr. WARRINGTON: I am asking you as to October, November, and December.

Mr. CASANAVE: I will say October, November and December of last year.

Mr. WARRINGTON: What item is it?

Mr. CASANAVE: Boiler steel 3¼ cents and tires 5 cents per pound. I recollect a few of these items; I do not burden my mind with any of them. As I say, it is not necessary for me to memorize prices of materials, and for that reason I am absolutely unable to quote figures that I would give as entirely correct, under oath.

Mr. WARRINGTON: When, if ever, did you make up figures or tables like those in Exhibits 26 to 30, both inclusive, prior to the making of those exhibits?

Mr. CASANAVE: Every lot of cars and locomotives built are figured out separately, giving detailed amounts of labor and material and cost, compiled in my office.

Mr. WARRINGTON: I think you did not observe the question. I have no doubt you want to answer it. I will ask the sstenographer to repeat it.

The question was read.

1337 Mr. CASANAVE: Do I understand you to ask if we make tables showing comparisons of prices of materials used in cars at one time with another time?

The CHAIRMAN: Mr. Warrington asks when, if ever, have you had occasion to make up tables similar to those shown in these Exhibits.

Mr. CASANAVE: We make up such a tabulated statement every time a lot of cars or locomotives are built at the shops. We may do that ten times a year.

Mr. WARRINGTON: Do you mean that these Exhibits are simply a copy of what is made out in your department every month or every time locomotives are built?

Mr. CASANAVE: That is exactly what it is.

Mr. WARRINGTON: Then we could go to your office and get these for any month in the year, could we—reproductions of these?

Mr. CASANAVE: For any lot of cars or locomotives that have been built; yes, sir.

Mr. WARRINGTON: Now, were these Exhibits made to describe what was expended or done with respect to a particular lot of cars?

Mr. CASANAVE: Yes, sir.

1338 Mr. WARRINGTON: What cars were they?

Mr. CASANAVE: The cars built the early part of this year and locomotives built during the early part of this month.

Mr. WARRINGTON: Let me see if we understand each other. When you were asked to make out these Exhibits you were asked to combine certain transactions which you had gone through with?

Mr. CASANAVE: I must say very frankly to you that I was unfortunate in having very little, or nothing, said to me, not enough for me to post myself. I was merely asked to bring with me statements showing the effect of the increased cost of material on the cost of locomotives and cars, and prepared a statement with that in view.

Mr. WARRINGTON: These are not copies of statements which had been made before?

Mr. CASANAVE: They are perfect copies of the prices given to us and charged to us for materials that entered into the cost of locomotives and cars.

Mr. WARRINGTON: I will tell you what I will ask you to do: Take Exhibit 26; do you mean to say that Exhibit 26 was in form just as it is here when you received instructions to prepare what you did?

1339 Mr. CASANAVE: No, sir.

Mr. WARRINGTON: It was not?

Mr. CASANAVE: It was not.

Mr. WARRINGTON: From how many different sources was the information taken which is recorded and given in Exhibit 26?

Mr. CASANAVE: From one source—the shop clerk's records.

Mr. WARRINGTON: How many reecords did he have to go to?

Mr. CASANAVE: He does not have to go to any; he has the records. The materials used by all the shops are reported to him and compiled by him.

Mr. WARRINGTON: He has them in various books?

Mr. CASANAVE: He has not; no, sir.

Mr. WARRINGTON: Who has the records in various books?

Mr. CASANAVE: Nobody that I know of.

Mr. WARRINGTON: Well, if this was not copied from some one thing, but was compiled, it was taken from different sources.

Mr. CASANAVE: It was taken from the book of the shop clerk, who has charge of ascertaining and figuring out for me the actual cost of locomotives and cars.

Mr. WARRINGTON: And that is so as to each one of these Exhibits?

1340 Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Then you never had occasion to make Exhibits just in form the same as these prior to this time?

Mr. CAS-NAVE: No, sir.

Mr. WARRINGTON: Were you in your department last year, were you?

Mr. CASANAVE: Yes, sir—no; I was in Europe for three months.

Mr. WARRINGTON: When?

Mr. CASANAVE: Last year.

Mr. WARRINGTON: At what time?

Mr. CASANAVE: From June until September.

Mr. WARRINGTON: But you were there from the 1st of September until the first of the year? In your department?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Could you give me any comparison between the prices of coal ten years ago and now, or 1893 and now?

Mr. CASANAVE: The prices of coal in 1893 were about 20 per cent less than they are now.

Mr. WARRINGTON: How much?

Mr. CASANAVE: 20 per cent. less as far as I can remember, without verifying it.

1341 Mr. WARRINGTON: How are they now?

Mr. CASANAVE: The price of coal varies very greatly in different districts, depending on the character and quality of the coal. We pay from 85 cents to $1.05 at the mines.

Mr. WARRINGTON: Here are the prices given in your report for 1893. How do they compare with the present?

Mr. CASANAVE: They would be somewhat higher now; probably about 20 per cent. higher. The prices will range from 85 cents to $1.05 a ton now.

Mr. WARRINGTON: Do you give the price per ton in Exhibit 30?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: You give it in gross?

Mr. CASANAVE: This is the gross cost of the fuel to us (referring to Exhibit).

Mr. WARRINGTON: Do you know the cost per ton?

Mr. CASANAVE: I cannot tell you the average cost per ton. I can get it very easily.

Mr. MAXWELL: I thought we had a statement of that.

Mr. CASANAVE: I did not know we had one showing that.

Mr. WARRINGTON: How do you know that it is 20 per cent.

1342 more than it was in 1893?

Mr. CASANAVE: Because I remember the figures that obtained in 1893. I buy all of the coal.

Mr. WARRINGTON: Do you remember the figures to be different from what they appear in the report?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Do you remember the figures independently of the report?

Mr. CASANAVE: I remember the figures independently of the report. The figures I named are the figures I pay for the coal at the mine.

Mr. WARRINGTON: If you cannot remember any of the figures of this year, how can you say there is a difference of 20 per cent.?

Mr. CASANAVE: I do remember all the figures of this year and have answered that they were from 85 cents to $1.05 per ton.

Mr. WARRINGTON: That is lower than any price named here, is it not?

Mr. WARRINGTON: Why do you say the price in 1893 was
1343 20 per cent. lower than in 1900?

Mr. CASANAVE: These figures refer to something else. They refer to other expenses. I refer to what I pay for coal at the mine. These figures probably refer to items of expense, handling and other expenses, that must necessarily be added to deliver it on locomotives. That is the cost delivered on locomotives. I speak of the price paid at the mine.

Mr. WARRINGTON: What is it delivered on locomotives this year?

Mr. CASANAVE: I do not know.

Mr. WARRINGTON: How can you say then that there is a difference of 20 per cent. in price over 1893?

Mr. CASANAVE: I say there is a difference of 20 per cent. in what I pay now and what I paid in 1893.

Mr. WARRINGTON: You are speaking of the price at the mines—not of the price on locomotives in either year?

Mr. CASANAVE: No, sir.

Commissioner CLEMENTS: What kind of coal do you have reference to in these years?

Mr. CASANAVE: Bituminous coal; we use a very small proportion of anthracite coal.

1344 Mr. WARRINGTON: Now, Mr. Casanave, it is true that the Pennsylvania Railroad Company pays its dividends on its stock.

Mr. CASANAVE: I am happy to say it is so; yes, sir.

Mr. WARRINGTON: It is true that its stock commands quite a premium? It is worth 135 to 140?

Mr. CASANAVE: More or less.

Mr. MAXWELL: Do you know this, Mr. Casanave? Anybody who keeps track of the market knows it can be bought at 127.

Commissioner YEOMANS: He said more or less. That will cover it.

Mr. CASANAVE: I said more or less. I looked at the quotations and saw what it was day before yesterday.

Mr. WARRINGTON: What did it sell for day before yesterday?

Mr. CASANAVE: 126, if I remember correctly. That is as I remember it.

Mr. WARRINGTON: Now, every year that you have had the heavy machines and heavy equipment, you have been able to pay all fixed charges, interest on bonds and the regular dividend on the stock, have you not?

1345 Mr. CASANAVE: I do not know; I am not able to answer that question. Generally, I have not heard anyone complain about not receiving dividends. I could not say that it is not so.

Mr. WARRINGTON: You know they have carried large sums annually into these improvements.

Mr. CASANAVE: I do not know anything about it.

Mr. WARRINGTON: Don't you know that all of these improvements have been paid for out of current earnings?

Mr. CASANAVE: I do not know anything about it.

Mr. WARRINGTON: Don't you know in addition to that that large sums have been carried annually to surplus account?

Mr. CASANAVE: I do not know anything about it.

Mr. WARRINGTON: Are you familiar at all with the reports of your President?

Mr. CASANAVE: I glance at them when they are made; that is the end of it. They are of no interest to me whatever.

Mr. WARRINGTON: You know your rate per ton per mile has greatly been reduced, don't you?

Mr. CASANAVE: I don't know anything about that either.

Mr. WARRINGTON: Is your company so departmentized, if I may use that term, that one man knows simply what is in his
1346 department and nothing else?

Mr. CASANAVE: Fortunately so. My jurisdiction extends over 26,000 employees and an expenditure of about $25,000,000 a year, and it is as much as I can do to oversee that department and cannot do anything else. I presume other departments are in the same shape.

Mr. WARRINGTON: Is it possible for you to have the information necessary to control that many thousand people and all the traffic in charge of the Motive Power Department and not observe anything else in any other department of your company?

Mr. CASANAVE: Yes, sir; perfectly so. These statements and other statements is all I want; they give me all the information I need. If my expenses are higher than they ought to be, it doesn't take the General Manager long to compel me to reduce them to what they ought to be.

Mr. WARRINGTON: You compare notes with your brother officers, don't you?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: Would you speak to one of them if you met him on the street?

1347 Mr. CASANAVE: Yes, sir.

Mr. COLSTON: Provided you knew him.

Mr. CASANAVE: Yes, sir. If I saw the man who compiled the rate per ton per mile or tonnage miles, I would not *not* know him.

Mr. WARRINGTON: Are you the right hand or left hand to the President of the Company?

Mr. CASANAVE: I bear no relation to the President of the company. I am one of the staff officers of the General Manager.

Mr. WARRINGTON: What department is more important than the Motive Power Department? I mean the matter of the economy and the ultimate end of railroading,—carrying freight at the cheapest price practicable.

Mr. CASANAVE: I do not know any more than that we think we are quite important in the Motive Power Department, but I would not be able to make any comparisons in that respect.

Mr. WARRINGTON: You would not have any information at all about the Traffic Department?

Mr. CASANAVE: Absolutely no information whatever; but what I have I have laid bare to you here.

1348 Mr. WARRINGTON: Do you know a locomotive when you see it on anybody else's track?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: You make comparisons, don't you?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: You do so between the cars of your company and of other companies?

Mr. CASANAVE: What do you mean?

Mr. WARRINGTON: To keep yourself up to date?

Mr. CASANAVE: I know from technical publications, from technical papers.

Mr. WARRINGTON: You keep up with the literature of railroading, do you not?

Mr. CASANAVE: Yes, sir, that is, in the engineering department, for that is my duty.

Mr. WARRINGTON: It is just the Motive Power Department?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Does anything ever get into the books you read, or the literature, that relates to anything but motive power?

1349 Mr. CASANAVE: I never read it unless it is something of interest to me.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: Will you please state to the Commission what, if any, report you made to the General Superintendent with respect to increase or decrease of cost of your department in the year 1899. I do not want to know the particular reports or particular dates, but whether you did make such reports?

Mr. CASANAVE: I did.

Mr. MAXWELL: And how frequently?

Mr. CASANAVE: Monthly and yearly.

Mr. MAXWELL: You may state to the Commission whether you inform yourself from month to month, or at other periods, with respect to whether expenses in your department are decreasing or increasing?

Mr. CASANAVE: I keep myself informed from month to month of any changes in expenditures.

Mr. MAXWELL: Of the property under your jurisdiction of the railroads with which you are connected, what becomes of the lighter equipment as you introduce from time to time the heavier equipment?

1350 Mr. CASANAVE: It is either sold or scrapped.

Mr. MAXWELL: Do you know what the actual experience has shown, if anything, with respect to the effect of this heavy equipment on tracks, bridges, and roadway?

Mr. CASANAVE: So far as tracks, roadways, and bridges, I do not know personally anything about that.

Mr. MAXWELL: Or on the cost of maintenance of roadway?

Mr. CASANAVE: Neither.

Mr. MAXWELL: Have you got to the end of the string in these equipments?

Mr. WARRINGTON: Don't lead, please.

Mr. MAXWELL: I know a leading question when I see it.

Mr. WARRINGTON: The question suggests the answer.

Mr. MAXWELL: Please repeat the question.

The question was repeated by the stenographer.

Mr. MAXWELL: Or are there opportunities and prospects of making further improvements?

Mr. CASANAVE: I do not know of any further prospects, because the clearances are not sufficient to permit the use of larger
1351 equipment than we have at present. I refer to tunnels, bridges, etc. It would be necessary to widen tracks.

The CHAIRMAN: Do you mean starting with the standard gauge as the physical basis of operations, without reference to tunnels, bridges and obstructions of that kind, that you have about reached the maximum size of rolling stock that can be used with economy?

Mr. CASANAVE: With safety only. The width of cabs on locomotives and of cars is so great that they are very close together now; if further increased it might result disastrously to employees that might be leaning out.

The CHAIRMAN: You mean if you could increase the width of cars, for instance, that the distance between the tracks would not permit it?

Mr. CASANAVE: That is what I mean, your honor.

The CHAIRMAN: The tracks would have to be farther apart?

Mr. CASANAVE: Yes, sir.

The CHAIRMAN: In order to use equipment of greater width than now in use?

Mr. CASANAVE: Yes, sir; no greater equipment and no
1352 more powerful locomotives can be made now without increasing the width, so far as we know now, with safety.

Mr. MAXWELL: I believe that is all.

Commissioner CLEMENTS: Does the construction of the modern car or larger engine result in greater strength and durability?

Mr. CASANAVE: That is one of the points about which no engineer can predict anything. The steel car we hope will prove very much more durable and prove stronger to resist shocks and damage either in wrecks or rough handling. Whether that will be so or whether it will be counteracted by the corrosive effect of sulphur in the coal we cannot tell. We have had some evidences of very rapid destruction of the coal cars from corrosion. But these cars have only been in service on our line for about two years or a little less, and it is too soon for us to be able to form any positive opinion as to relative strength or durability.

Commissioner CLEMENTS: Leaving out coal cars and taking the ordinary car, is it constructed with greater strength and of better material, so that it is more durable and so that its life will be longer than the former box car?

1353 Mr. CASANAVE: Whether the increase in the dimensions of the parts of 80,000 pound cars, which are wooden cars, will prove sufficient, I am not quite sure; we have put in all the material

that we could reasonably put in them to make them as durable as possible and more durable perhaps than the old style cars.

Commissioner CLEMENTS: I have heard something about the unit of cost of construction—of different elements that enter into the cost of construction of cars and locomotives. I suppose you take into that the various parts, the steel and other material?

Mr. CASANAVE: Yes, sir.

Commissioner CLEMENTS: It is also observable that there has been an increase in the cost of these parts, a considerable increase in regard to some of them. Is any of this increase due to superior quality of the goods, or are they substantially the same as the lighter parts of the old cars?

Mr. CASANAVE: They are substantially the same as before. The materials of the Pennsylvania Railroad are always bought subject to certain specifications, describing the characteristics, the physical properties that the material should possess, when possible to do so.

1354 Commissioner CLEMENTS: Is it not a fact that in the manufacture of steel and many of these elements that go into the construction of cars and locomotives, there have been great improvements in the quality of the articles themselves, when you take a number of years?

Mr. CASANAVE: It is not our experience that there has been such an increase in the relative values of the manufactured materials. It is just the reverse. We have greater difficulty, and have had for the last two years, to procure material to meet our specifications than we have had before.

Commissioner CLEMENTS: When the standard was no higher?

Mr. CASANAVE: No higher than now. The *The* rejections of material by our test department have been very many. I have to keep inspectors at all points where we buy material almost continuously to loo*f* after material as far as we are permitted to do so.

The CHAIRMAN: Does that mean for the last ten years that the standard of quality of materials has not been increased?

Mr. CASANAVE: I believe that to be the case, your honor.

The CHAIRMAN: That the standard ten years ago was just as high as now?

1355 Mr. CASANAVE: Yes, sir.

The CHAIRMAN: And you say that you have greater difficulty in getting good material than you had then?

Mr. CASANAVE: Yes, sir.

Commissioner YEOMANS: Good timber is scarcer now also.

Mr. CASANAVE: Yes, sir.

Commissioner CLEMENTS: Why is that the case, that you have greater difficulty in getting as good a quality?

Mr. CASANAVE: My observation has been that it is probably because of a disposition on the part of manufacturers to sacrifice quality to output, the demand for material has been so great for several years past, that to meet the demand the manufacturers have probably sacrificed one to the other.

Mr. WARRINGTON: Mr. Casanave, you do not mean to say, do you,

that there were no improvements made in locomotives or cars between 1890 and 1898?

Mr. CASANAVE: In so far as freight locomotives are concerned I have given you just what has happened on our road. In so far as passenger locomotives are concerned, we have also designed and produced higher types than we had before.

1356 Mr. WARRINGTON: I am not making myself plain to you. I am asking whether there were not improvements made in the equipment, say, between 1885 and 1895?

Mr. CASANAVE: In so far as capacity is concerned, I would say no. 60,000 pounds was the maximum of cars for many years. In so far as improvements in details of construction, in redesigning broken parts and substituting others stronger or of better material, yes—improvements of that kind have been made.

The CHAIRMAN: You mean that therre was no general or important change in the type of equipment for a number of years prior to about 1898?

Mr. CASANAVE: In so far as the carrying capacity was concerned, I would say no.

Commissioner CLEMENTS: Would you say also that there were many more of the 60,000 pound cars in 1895 than in 1885?

Mr. CASANAVE: Yes, sir. Every car of low capacity for the last ten years, or at least since I have been on the Pennsylvania Railroad, has been rebuilt to 60,000 pounds' capacity until we introduced the 80,000 pound cars.

Commissioner CLEMENTS: That has been so on all roads, has it not?

1357 Mr. CASANAVE: I think so; I do not think there is any doubt about that.

Mr. WARRINGTON: There has been a change from a low class to a high class equipment?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: They used to have cars of 20,000 pounds and then 30,000 pounds capacity.

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: And as soon as they got up to 60,000 they were introduced as fast as they could be?

Mr. CASANAVE: Yes, sir.

Mr. WARRINGTON: Then they had locomotives correspondingly improved?

Mr. CASANAVE: Yes, sir; locomotives were correspondingly improved.

Mr. WARRINGTON: Seeing that you are willing to make predictions about reaching the end of your string in improvements, this is true, I take it, that if you could still further decrease the cost per ton per mile, if by widening the tracks the improvements could go on, it would not be so much of a cost to widen the tracks as it has been to reduce grades and curves?

1358 Mr. CASANAVE: I have no idea of the cost of reducing grades and curves, and do not know anything about the cost of widening tracks.

Mr. WARRINGTON: You do not pretend to say that tracks will not be widened and tunnels widened?

Mr. CASANAVE: It would be unsafe to make predictions.

Mr. WARRINGTON: Prices were all down at a very low ebb from 1893 to 1896, were they not?

Mr. CASANAVE: Yes, sir; that is my recollection.

Mr. WARRINGTON: Now, they seem to have gone up some, at the time of the raising of this classification. Have you any idea of the permanency of these prices?

Mr. CASANAVE: I have not.

Mr. WARRINGTON: Is it your observation that you throw cars and locomotives into the scrap piles before they are worn out?

Mr. CASANAVE: No, sir.

Mr. WARRINGTON: That is all.

Mr. WARRINGTON: I will ask that you give that paper to the Commission (referring to Exhibit —). Let us have that so that it can
ce marked. It is a paper headed Pennsylvania Railroad
1359 Lines East of Pittsburg and Erie; Performance of Locomotives; Freight Car Mileage; Average Number of Cars and Tons Per Train; Average Number of Tons Per Car, &c.

The CHAIRMAN: Do you want that to go into the record?

Mr. WARRINGTON: Yes, sir.

The CHAIRMAN: Let it be marked as an exhibit.

(The same is hereto attached and marked Exhibit —.)

Mr. CASANAVE: I would like to have this and make a copy to file.

The CHAIRMAN: Return it to Mr. Cas-nave, and he will send us a copy.

Mr. MAXWELL: Here is something that I think ought to go in also. This shows the mileage expense of locomotices and cars for 1899 compared with 1896. Can you let us have this, Mr. Casanave, or a copy of it?

Mr. CASANAVE: I would like to keep that. I will furnish a copy of it. That is my own copy.

Mr. MAXWELL: Let it be marked.

(The same is hereto attached and marked Exhibit —.)

Witness excused.

1360 A. H. McLEOD, a witness called on behalf of the Defendants, being duly sworn, testified as follows:

Mr. MAXWELL: Mr. McLeod, where is your residence, and what is your business?

Mr. McLEOD: My residence is near Cincinnati, in the suburbs; and my business is Traffic Manager of the Cincinnati, Hamilton & Dayton Railway.

Mr. MAXWELL: How long have you been in that position?

Mr. McLEOD: I have been practically in the same position twenty-five years.

Mr. MAXWELL: Prior to that time what if any connection did you have with the railroad business?

Mr. McLEOD: During a part of that twenty-five years the title of my office was General Freight Agent, and a part of the time traffic manager.

Mr. MAXWELL: Prior to that time what experience, or connection with the railroad business did you have?

Mr. McLEOD: My first service was with the Baltimore & Ohio Railroad, beginning with 1861, at the time of the war, and I was employed with that Company several years. I was transferred to Pittsburg, where I had charge of the Pittsburg, Washington & Baltimore Railroad's freight department; then I went to the Erie Road
1361 with which I was connected about two years; thence to Toledo, starting a fast freight line, and from Toledo I came to the Cincinnati, Hamilton & Dayton Railroad.

Mr. MAXWELL: I believe you are also a member of the Classification Committee?

Mr. McLEOD: Yes, sir.

Mr. MAXWELL: How long have you been a member of that Committee?

Mr. McLEOD: I have been a member of the Official Classification Committee since its formation; before that I was a member of the Middle and Western States Classification Committee.

Mr. MAXWELL: In order that we may get the date on the record, will you kindly tell us when the Official Classification Committee was established.

Mr. McLEOD: In 1887.

Mr. MAXWELL: What was the experience of your railroad company last year as compared with former years with reference to the expense of operating the road?

Mr. MATTHEWS: What former years do you mean?

Mr. MAXWELL: I said former years. I do not know how many.

Mr. WARRINGTON: We object to the question.

1362 The CHAIRMAN: Of course the question is a very general one. Do you mean twenty years ago? Mr. Maxwell, perhaps you will modify the question if that is the objection.

Mr. MAXWELL: No, of course I do not want to go back twenty years, or ten years, but I want to know with reference to years immediately preceding.

Mr. McLEOD: I would like to have the question repeated.

The question was repeated as modified covering years immediately preceding.

Mr. McLEOD: The annual reports of our Company, which I examined before I left home, show that——

Mr. WARRINGTON: I object. It is just what I supposed it would come to, that he would be reciting hearsay. If he has any report let us have the report.

Mr. MAXWELL: Mr. McLeod, do you know what the price of coal on the Cincinnati, Hamilton & Dayton Railway was last year as compared with the years preceding?

Mr. McLEOD: Are you speaking of 1899 as compared with 1898?

Mr. MAXWELL: Do you know what it was in 1899?

Mr. WARRINGTON: You are asked if you know. I suppose you

know the meaning of that question. It is not what somebody
1363 has told you.

Mr. McLEOD: I examined and saw the vouchers which showed the amount paid by the Company for the coal. If that is not competent evidence I do not know what would be.

Mr. WARRINGTON: I think it is not competent.

The CHAIRMAN: He may answer.

Mr. McLEOD: 88 cents a ton.

Mr. MATTHEWS: What year is that?

Mr. McLEOD: 1899.

Mr. MAXWELL: Do you know the price this year, Mr. McLeod?

Mr. McLEOD: Yes, sir; $1.07.

Mr. MAXWELL: Can you tell us the price for any prior year? If so, what year?

Mr. McLEOD: No, sir.

Mr. MAXWELL: How much coal do you use on your road?

Mr. McLEOD: About 30,000 tons a month.

Mr. MAXWELL: How much would that make the coal on your road cost this year more than last year?

Mr. McLEOD: That would make the coal cost about $5,700. per month, more, or $68,400. a year.

Mr. MAXWELL: Do you mean that is the total amount it would cost?

1364 Mr. McLEOD: No, sir; that is the increase. I understood you to ask for that.

The CHAIRMAN: That is it costs you 19 cents more per ton this year than it did last year, or $5,700 more a month?

Mr. McLEOD: Yes, sir. The increased cost of mining alone is 14 cents a ton.

Mr. MAXWELL: Will you give us such information as you have, or know, with reference to comparative cost of other items on your road.

Mr. WARRINGTON: We simply offer an objection to this line, that it may be noted on the record. I take it that it falls within the ruling you have made.

The CHAIRMAN: He may answer.

Mr. McLEOD: I have here a memorandum of figures on a good many items which perhaps are just a duplication of the information you already have. On steel rails the price this year is $35.00 per ton, last year, or a part of last year at least, the price was $34.00 per ton. In 1898 it was $17.00, in 1897 it was $17.00.

Mr. WARRINGTON: How much was that?

Mr. McLEOD: $17.00.

Mr. MAXWELL: I have here in tabulated form what I un-
1365 derstand Mr. McLeod intends to present. I will submit it to Mr. Warrington and see if he would rather take it in that form than to spend the rest of the day asking questions on it.

Mr. WARRINGTON: I do not like to do it, but I am going to submit to it again. I do not know how to try a case this way, but I do not know how to help myself, your honor. I think it is incompetent from top to bottom.

The CHAIRMAN: We appreciate the difficulty, Mr. Warrington.

The paper itself is not competent, but if that method is not adopted, then of course the matter must be taken up by question and answer.

Mr. WARRINGTON: (After argument) Let it appear that we withdraw formal objection to this so far as it is a copy of something, reserving the right to have it explained on cross examination.

Mr. MAXWELL: Are you able to tell us on your oath whether there has been any change in the cost of labor, and, if so, what?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: Did that paper go in as an exhibit?

Mr. MAXWELL: Yes, sir.

The same is hereto attached and marked Exhibit "32."

1366 The CHAIRMAN: I appreciate these embarrassments to you, Mr. Warrington, but if later on in this case it seems reasonable to believe that that presents a partial, one-sided, or distorted view of the facts you will not be precluded. We want to get at the truth about this thing, and all of the truth that has any bearing on the questions that are to be considered.

Mr. MAXWELL: I believe I asked a question in regard to cost of labor, Mr. McLeod?

Mr. MCLEOD: I said that I had some information on it. The men employed in our shops at Lima, where our largest shops are located, for instance, machinists——

The CHAIRMAN: When are you speaking of?

Mr. MCLEOD: 1887.

Mr. MAXWELL: I do not care to go back to 1887.

Mr. MCLEOD: Well, I have nothing here except as to wages paid in 1887 and wages paid in 1900.

Mr. MAXWELL: I do not care about that information. If Mr. Warrington wants it he can get it.

Mr. MCLEOD: The only reason it came to be in these two years was that I asked the Auditor to get me out copies of the pay roll;—

1367 I examined them personally myself—and he brought me copies for 1887 and 1900. I asked him to look over others and see if it was a fair representation, and he said it was.

Mr. MAXWELL: Do the records or accounts of railroad companies, generally, according to your observation, show the earnings per ton per mile?

Mr. MCLEOD: Yes, sir, they do; they attempt to do it, and do it, by averaging their rate as against tonnage.

Mr. MAXWELL: Can you present us a statement taken from the records of the accounts of your company showing the earnings per ton per mile for a series of years up to the latest period, and also of expenses to earnings?

Mr. MCLEOD: Yes, sir; I have a statement prepared which I think will answer that.

Mr. MAXWELL: Is this the statement? (Exhibiting it.)

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: We desire to offer that in evidence.

The same is hereto attached and marked Exhibit "33."

Mr. MAXWELL: This is a statement showing the decrease in amounts received per ton per mile for 12 years, ending with last year, and the increase in ratio of expenses to earnings for the same

years on the C. H. & D. System. The earnings of this System per ton per mile in 1888 were .89 cents, and they have gone down
1368 to .62. The ratio of expenses to earnings during the same time has gone up from 59 to 69.82. Now I have come to a point where I want to take up another subject and perhaps your honors will take a recess now.

The CHAIRMAN: We will take a recess until 2 o'clock.

The Commission (at 12:45 P. M.) took a recess.

1369 After Recess.

2 O'CLOCK P. M.

A. H. McLEOD resumed the stand.

Mr. MAXWELL: Mr. McLeod, what brought about this reduction in the average earnings per ton per mile referred to in Exhibit No. 33.

Mr. WARRINGTON: Do you claim to know about this, Mr. McLeod, of your own knowledge.

Mr. McLEOD: It depends on what you mean by that.

Mr. MAXWELL: I suppose a man who has been a traffic manager twenty-five years might be able to give some information on that subject.

Mr. McLEOD: As to my knowledge the decrease was brought about by the large amount of heavier articles and cheaper articles that are carried from year to year at a lower rate.

Mr. MAXWELL: Has there been any change—any increase or decrease during these years in the classified articles and the rates on classified articles.

Mr. McLEOD: There has been no material change, I believe, no decrease.

1370 Com'r CLEMENTS: What years do you speak of now?

Mr. McLEOD: From 1889 to practically 1900, or to 1899.

The CHAIRMAN: Your other statement seems to apply to the relative amount of heavier and cheaper articles—that is, they increased.

Mr. McLEOD: I think it has all over the county in volume. Whether the volume has perceptibly increased or not, what has been carried has been carried at lower prices.

Mr. MAXWELL: What classes of articles do you refer to?

Mr. McLEOD: Heavier articles.

Mr. MAXWELL: What did you refer to.

Mr. McLEOD: I referred to such articles as pig iron ore, coal, stone, sand, and such as that, and logs—what might be called the heavier run of articles—and grain, too.

Mr. MAXWELL: Are the rates on those articles affected by competition of water carriers?

Mr. McLEOD: Some of them are, notably grain.

Mr. MAXWELL: When was the suggestion first made which led to the recent revision contained in Classification No. 20.

1371 Mr. McLEOD: It was made in the last year, about the latter part of the year, towards September or August—somewhere in there.

Mr. MAXWELL: When did the classification committee have its first meeting and take the subject up?

Mr. MCLEOD: In October—the first part of October, I think.

Mr. MAXWELL: Well, what was done at that meeting in a general way? I do not want all the details.

Mr. MCLEOD: The committee went through the classification and recommended advances on a large number of articles either from one class to another or from one class to one half of a class, you might say, as for instance, from first to first and a half. They recommended that.

Mr. MAXWELL: What was done with that recommendation?

Mr. MCLEOD: That recommendation was sent out to all the roads interested for their vote in favor of or against it.

Mr. MAXWELL: Then what happened?

Mr. MCLEOD: The roads voted upon it and it was announced by the chairman of the Central Freight and the Trunk Line
1372 Associations that the recommendations of the committee had been carried—adopted. It was voted upon by the different roads favorably.

Mr. MAXWELL: Then did you announce the class?

Mr. MCLEOD: It was announced when the classification would take effect. It was January 1st, 1900.

Mr. MAXWELL: I wish you would tell the Commission something about the extent of the revision which took place in this official classification No. 20.

Mr. MCLEOD: You mean about the subsequent changes after January?

Mr. MAXWELL: No, the extent of the changes that were made in the new classification, something about how many articles or how general it was—whether it referred to a few or many?

Mr. MCLEOD: The changes embraced a large number of articles. I cannot give the precise number but can give it approximately only. I believe that from the sixth to the fifth there were some 56 articles advanced. That is approximate; from fourth to third, nearly 300; and from the 3rd to the 2nd about 190; and from the others there were enough changes to aggregate between 600 and 700 in all. I do not remember the exact figures for the other classes.

1373 The CHAIRMAN: That is the entire changes made?

Mr. MCLEOD: The entire changes were somewhere between 600 and 700.

Mr. COLSTON: That would be in addition to what you stated?

Mr. MCLEOD: No, that includes it.

Mr. MAXWELL: Was any change made in commodity rates?

Mr. MCLEOD: By the Classification Committee?

Mr. MAXWELL: Yes.

Mr. MCLEOD: No; the classification committee does not handle or deal with commodity rates. They are dealt with by the railroads individually.

Mr. MAXWELL: The classification committee does not say what shall be a commodity article or what shall not be?

Mr. MCLEOD: No, sir.

Mr. MAXWELL: Or what the commodity rate shall be?

Mr. MCLEOD: No, sir.

Mr. MAXWELL: Was there in fact at or about the time of this revision of the classification a change in commodity rates either in adding to or wiping out commodities or changing the rates on commodity articles.

Mr. MCLEOD: Yes, sir.

1374 Mr. MAXWELL: How general was that?

Mr. MCLEOD: It was quite general.

Mr. MAXWELL: Well, perhaps you can give the Commission a little more definite idea what some of the subjects were and how the rates were changed.

Mr. MCLEOD: There were a large number of commodity rates withdrawn from the commodity list entirely and other commodity rates were advanced so that the revision of commodity rates was quite extensive.

Mr. MAXWELL: Can you give us some of the particular commodity articles that were affected in that way?

Mr. MCLEOD: Pig iron, lumber, stone, coal, brick, logs, ore, and other articles—I name those—they were advanced materially, and quite a number were withdrawn. Quite a number were withdrawn altogether. Among those withdrawn I can name a few: sewer pipe, box material, car sills, old; earthenware; fertilizer rock; salt refuse; scrap zinc and radiators.

The CHAIRMAN: The effect of their withdrawing commodity rates on those articles was to restore them to the classified list?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: And to apply class rates to them?

1375 Mr. MCLEOD: Yes, sir.

Com'r CLEMENTS: That was always a higher rate, was it not?

Mr. MCLEOD: The classified rate?

Com'r CLEMENTS: Yes, sir.

Mr. MCLEOD: The classified rate was always higher than the commodities; yes, sir.

Mr. MAXWELL: Do you recall whether they took out of commodity rates any of the stuff that Procter & Gamble receive.

Mr. MCLEOD: I do not. I believe that they were continued—the commodity rate on tallow.

Mr. MAXWELL: Lumber?

Mr. MCLEOD: The commodity rate on lumber was continued. That was probably advanced, but it was continued as a commodity rate.

Mr. MAXWELL: I believe you have prepared a list of the articles which under this new classification stand in fifth and sixth classes, and for the convenience of the Commission, I wish you would identify it. We will offer it in evidence.

Mr. MCLEOD: This is a list drawn off from the classification.

1376 The CHAIRMAN: Of fifth and sixth classes.

Mr. MCLEOD: Yes, sir.

The same is hereto annexed and marked "Exhibit No. 34, McLeod."

Mr. MAXWELL: I believe you have also prepared a list of the principal articles transferred from fifth to sixth class by that revision.

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: Identify that and offer it in evidence. Let me ask you, is that a complete list or a list of the principal articles.

Mr. MCLEOD: This is supposed to be complete.

The same is hereto annexed and marked "Exhibit No. 35, McLeod."

Mr. MAXWELL: Now, it has been suggested by the complainant that if increased revenue were desired a horizontal raise could be made. I would like to have you communicate your views on that subject to the Commission.

Mr. MCLEOD: My views are that it would have been impracticable. While it might have been desirable from one point of view yet from others it would not have been justifiable and would have been impracticable.

Mr. MAXWELL: Why impracticable?

1377 Mr. MCLEOD: Impracticable mainly on account of the great time that it would have taken all the roads to have prepared suitable tariffs for the new conditions that would have resulted; unjustifiable because there were a large number of articles that the committee felt ought not to be raised and there are a large number of articles in the commodity list of rates that might not bear an increase. So, with the two reasons together, the committee and the railroads associated with them in considering the matter felt that it would be really impossible to carry that idea out.

Mr. MAXWELL: Was that plan suggested and discussed?

Mr. MCLEOD: That plan was suggested and talked of.

Mr. MAXWELL: I wish you would tell us a little more particularly what you refer to as to the impracticability with reference to the time it would take?

Mr. MCLEOD: I do not know how many tariffs are in the whole country, but there must be a good many thousand, and they are issued under so many varying conditions that even if that plan had been adopted it would have been practically impossible on the part of some roads to apply the percentage increase to certain tariffs, but the time it would have taken and the expense of

1378 printing would simply have been very great indeed. The Commission are probably better aware of the number of tariffs that would have been involved than any other set of men.

Com'r YEOMANS: There are five to seven hundred a day, I believe, filed here.

Mr. MAXWELL: The rates that you file, for instance, for your road alone, what new rates would you have to make and file with the Interstate Commerce Commission.

Mr. MCLEOD: We would have had to revise and file every tariff we issued and there are some hundreds.

Mr. MAXWELL: Well, I will not go over the details about this conference that the shippers afterwards had with you. What,

if any, complaint was made at that conference as to the result of your labors and the revising of the classification.

Mr. WARRINGTON: I object to that on the ground that it cannot affect The Procter & Gamble Company.

Mr. MAXWELL: I will withdraw that question then and put this one. After the committee revised the classification, reducing the third class by twenty per cent., was any complaint made to the classification committee or your road against the classification established by you otherwise than by the Procter & Gamble Company?

1379 Mr. MATTHEWS: Well, we object to that.

The CHAIRMAN: It appears that after Classification No. 20 went into effect there was a conference between the representatives of the railroads and a large number of shippers in reference to the new classification. At that time the third class had not been modified by the 20 per cent. reduction, had it—and was it soon after that meeting?

Mr. MCLEOD: It was not modified until after the conference and a subsequent meeting of the roads to consider all the complaints.

The CHAIRMAN: They had this conference with the shippers. Then the roads had another meeting and amended the classification by making third class 20 per cent. less?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: Now, you are asked since then has there been any complaint as to that classification.

Mr. MAXWELL: That is my question.

The CHAIRMAN: The fact seems at present, at least, of very little consequence one way or the other. I am inclined to think he should be permitted to answer the question. Of course I do not think it follows that everybody was satisfied because nobody made

1380 a complaint. He may answer the question.

Mr. MCLEOD: There was but one complaint made—by Procter & Gamble.

Mr. MAXWELL: You stated, I believe, that they paid under protest?

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: A comparison has been instituted by the plaintiffs between soap and certain other articles, rice, starch, cereal products and certain chemicals. I wish you would give to the Commission your views on that subject.

Mr. MCLEOD: You refer to the fact that they think soap should be compared with those articles in the way of rates?

Mr. MAXWELL: In the way of classes, I understand it, and that if those articles are entitled to a lower classification soap is also?

Mr. MCLEOD: With reference to cereal products, or what are familiarly termed grain products, the rate on those articles is influenced by the rate on the grain itself, and the rate on grain is compelled to be made very low on account of the peculiar competition that it is subjected to—water, water by the Great Lakes

1381 and water by the Mississippi River and the outlet of the Gulf of Mexico. Soap has not any such competition. The

articles are not akin in any way. It would make no difference with the rate on grain or grain products whether there was 100 pounds of soap shipped or ten million pounds, nor would it make any difference with the rate on soap whether there was 100 pounds of grain shipped or 10,000,000. They are not necessarily connected. With regard to starch, the same argument applies to starch. It is practically a grain product and its low rate has been forced down by the low rate on grain. Another thing in connection with starch is that it is exported largely and comes in competition in foreign countries with the low price starch that is made from potatoes over there; consequently it would not stand a very high rate. Rice is a food product. It is also used very extensively in the manufacture of beer, the same as corn or grits or brewer's meal. It takes the place of those articles; and consequently the rating on rice has to be lowered in order to preserve the relation between it and the grain products that are used in that manufacture; also as an article of food.

Mr. MAXWELL: Do those grain products compete with rice?

1382 Mr. MCLEOD: They do in the manufacture of beer and they also do as a food product.

Mr. MAXWELL: As I recollect, some suggestion was made that you did not get a double haul out of rice?

Mr. MCLEOD: In an indirect way, it might be said we get three hauls, a haul on the rice going to the brewery; we get a haul on the beer made from the rice; and we get a haul on the empty kegs brought back from the consumers to be refilled with beer.

Mr. MAXWELL: It has also been suggested that this reduction of 20 per cent. off third class has a certain effect upon local rates of certain eastern shipping centers, such as New York, with an injurious effect upon The Procter & Gamble Company. I wish you would give your views on that subject.

Mr. MCLEOD: There is some truth in the statement that it does affect them in that territory, but that the classification does that is to be doubted. Procter & Gamble have the same or a similar territory, but the territory is not quite so extensive. The only reason it is not so extensive is that it is not subjected to the water competition which the territory in New York and adjacent to the seacoast is subjected to. The New York manufacturer of

1383 soap gets rates which are made or compelled to be made by the water competition which is there met all along the coast up to New England and all the way down to New Jersey and all up the Hudson River and the Canal as far as Herkimer and so on, and no classification can be made as general as the official classification and cover such a territory that could possibly take into consideration such ideas or such causes—such a condition of rates. That question ought to be met, if it is met at all by the railroads, in the same way they meet similar questions in other directions and that would be to meet the commodity rates made necessary by the water competition in New York by a commodity rate from Cincinnati and that particular territory. It would be the only way it would be practicable, in my judgment, to meet the question and at

the same time maintain a classification that would cover the territory at large.

Mr. MAXWELL: In that connection, I wish you would give the facts to the Commission in reference to the St. Paul and Minneapolis rate, the increase therein which is complained of.

Mr. McLEOD: The complaint, I believe, was that the official classification by this change increased the rate from 25 to 33½, making an addition of 8½ cents. The fact is that the classification
1384 increased the rate from 25 to 31, making an increase of 6 cents instead of 8½. But after that tariff was established then another tariff was put in increasing the whole scale of St. Paul rates 2½ cents, which makes the 8½. The advance that was attributable to the classification proper is 6 cents and the 2½ cents is attributable to a general advance in the scale of rates.

The CHAIRMAN: The class rate was advanced 2½ cents?

Mr. McLEOD: Yes, sir; after the official classification went into effect.

The CHAIRMAN: That means that if soap should go back to the sixth class the rate would be 2½ cents higher to St. Paul than last year?

Mr. McLEOD: Yes, sir.

Mr. MAXWELL: How did that advance come about? By whom was it made?

Mr. McLEOD: That was made in consequence of an advance in the New York territory. The New York territory practically dominates the rates to St. Paul. The rates to St. Paul are made on a combination of rates to Chicago and a proportional rate from Chicago. The proportional rate now is 18½ cents and was, and that
1385 added to the rate to Chicago on fifth class, 30 cents, makes the present rate from New York to St. Paul 48½ cents. On the sixth class it would have been 25 and 14½—39½. I give these figures from recollection. There might be some little discrepency in them.

Mr. MAXWELL: Take it from Cincinnati, for instance, to St. Paul. Your line runs from Cincinnati to Chicago. Now, what proportion of that increase do you get or do the roads between Cincinnati and Chicago get.

Mr. McLEOD: We get on a 25 cent rate, 10 cents, which is 40 per cent. On the 25 cent rate we would get 10 cents; on the 33½ cent rate we would get 13.40. That is, comparing with the 25 cent rate. Comparing it with a rate which probably if it remained in sixth class would have been 26½, it would have been 10.60 instead of 13.40, a difference of 2.80.

Mr. MAXWELL: Have you made out a schedule of advances from Cincinnati to western points brought about by this revision of classification No. 20?

Mr. McLEOD: Yes, sir, (producing paper). This is a comparative statement showing the increase from New York to certain points as compared with the increase from Cincinnati to certain points. Is that the one you want?

1386 Mr. MAXWELL: Yes, sir.

Mr. MCLEOD: I worked this out. I had a memorandum and had them copied and presume they are correct.

The CHAIRMAN: Is that to show the comparative effect on a soap manufacturer at Cincinnati and one at New York?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: Of this change of classification of their article?

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: Now, have you made a calculation taken from the bills which the Procter & Gamble Company have themselves submitted of the extra freight they have paid as the result of this classification to show what that amounts to per box?

Mr. MCLEOD: Yes, sir; I did for one month. I did not take it as a whole.

Mr. MAXWELL: What month did you take?

Mr. MCLEOD: The month of May.

Mr. MAXWELL: That was the last month?

Mr. MCLEOD: The last month, I believe.

Mr. MAXWELL: Will you please give the result of that calculation—what road did you take?

1387 Mr. MCLEOD: Our road—the C. H. & D.

Mr. WARRINGTON: Have you offered that other paper?

Mr. MAXWELL: I will offer it.

The same is hereto annexed and marked "Exhibit No. 36, McLeod."

The CHAIRMAN: That calculation, as I understand it, shows how this change of classification would affect a New York manufacturer as compared with a Cincinnati manufacturer?

Mr. MAXWELL: Yes, sir.

The CHAIRMAN: That is what the statement is designed to show?

Mr. MAXWELL: Yes, sir.

Mr. MATTHEWS: If your honors please, this is only a half a statement in one respect, showing the rates from the east to certain points and from Cincinnati to those points. The statement does not pretend to show the rates from New York to certain points in the east and the rates from Cincinnati to the east.

The CHAIRMAN: I can well understand that it is not a complete disclosure of all the comparative effects resulting from this classification. Mr. Matthews, do you desire to make any objection

1388 or ask any further question about that exhibit at this time?

Mr. MATTHEWS: My particular object in addressing your honors was to have you understand what the exhibit was. That is all.

Mr. MCLEOD: The average cost per box was 2.96 cents per box. That is on the actual shipments made by the Procter & Gamble people over our road in the month of May to all points, carloads and less—the average increase per box on their shipments was 2.96.

Mr. WARRINGTON: Over the C. H. & D.

Mr. MCLEOD: Over the C. H. & D.; yes, sir.

Com'r CLEMENTS: How many boxes did that include altogether?

Mr. McLEOD: The memorandum has been detached from this. I can get that in a moment for you.

Mr. MAXWELL: We have taken all the statements, all the claims that have been submitted here and seen what they amounted to on each of the roads—consolidated it to see what it amounted to, taking all of them.

Mr. MATTHEWS: I thought he said he took only one month.

The CHAIRMAN: His answer now is that it is for the C. H. & D. for the month of May. Let me see if I understand. The
1389 statement which was introduced showed how much more the complainant paid the C. H. & D. road during the month of May than he would have paid before the change of classification in money?

Mr. MAXWELL: And it also showed the tonnage.

The CHAIRMAN: You simply divided those figures by the number of boxes?

Mr. McLEOD: We reduce the tonnage to boxes this way. We take the total tonnage and say 20 per cent. of that is Ivory, 70 pounds to a box, and we get the number of boxes of Ivory. Then the rest of it we take as the other soap at 83 pounds and reduce that to boxes. That gives the total number of boxes. Then we divide the total extra amount they paid by the number of boxes and that produces 2.96.

Com'r YEOMANS: On the C. H. & D.

Mr. McLEOD: On the C. H. & D. That is carloads and less than carloads, in official territory and out of official territory.

Com'r CLEMENTS: I understood that since this reduction of 20 per cent. the less than carload was put back about where it was before. Therefore my question was how much of this was in
1390 carloads and how much in less than carloads.

Mr. MAXWELL: We took the month of May and that was after the reduction was brought about.

Com'r CLEMENTS: That was afterwards, but that was also after the change which put the less than carload back to about where it was before.

Mr. McLEOD: No, sir; allow me to correct that a moment. The less than carload advance was not as much as the carload advance. I believe in their testimony they claimed it was 17½ per cent. Our figures show it varied between 15 and 20, and that their estimate is perhaps correct. An illustration is that the third class rate which was paid on the Chicago rate from New York to Chicago was 50 cents, raised from 35 to 50; they took 20 per cent. off 50, which is 10. That would reduce it to 40; so the soap in less than carloads would be advanced from 35 to 40 instead of from 35 to 50. That is the reason why the advance is smaller on the less than carloads—five cents on the 35 cent rate. Now, taking those together and aggregating—I have the number of boxes, if you wish to know it, 13,790 boxes.

The CHAIRMAN: Well, there should not be any misunderstanding about the facts. I understand the carload rate was raised
1391 from sixth to fifth and the less than carload rate was raised from fourth to third. The difference between third and

fourth classes is greater than the difference between sixth and fifth. Therefore the effect of the change of classification was to increase the difference between the carload and less than carload, and the 20 per cent. reduction off the less than carload rate was made in part or had the effect substantially of making the new rates, that is, the difference between the less than carload and carload rates substantially what it was before, although the less than carload rate remains higher.

Mr. McLEOD: Yes, sir; that is correct.

Mr. MAXWELL: That is the way I understand it.

The CHAIRMAN: Whether it was for that purpose it had the effect substantially of making the difference between carloads and less than carloads substantially the same as it was before?

Mr. McLEOD: Both of them being raised.

Mr. MAXWELL: In that connection I wish you would tell the Commission whether there was any other purpose than to reestablish the relation between carload and less than carload rates in making that change by which 20 per cent. was taken off third class?

1392 Mr. McLEOD: That was the controlling reason. There may have been some that felt that the proposed rate was too high, but the controlling reason was to reduce the difference between the carload and less than carload to about what it had been so that the large shipper under the new schedule would have no more advantage over the smaller shipper than he had before or the carload would have no more advantage over the less than carload than before.

Mr. MAXWELL: Was there any purpose to bring about any discrimination in favor of the New York or Boston or New England manufacturers as against the Cincinnati manufacturers?

Mr. WARRINGTON: One moment. Do not answer that for a moment. We object. If it has that effect, it can make no difference whether this witness or some other man had a motive.

The CHAIRMAN: That would seem to be so, Mr. Maxwell.

Mr. MAXWELL: Very well. Can you compare the rates on soap in the sixth and in the fifth class with the average earnings per ton per mile on your railway?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Do your honors think that is material?

1393 The CHAIRMAN: You may state what the average earnings are.

Mr. MATTHEWS: The point is this, if your honors please, they select one railroad out of sixty railroads.

Mr MAXWELL: We are not going to select one. We will give you every one if you desire it, but we can not give them all at once.

Mr. MATTHEWS: Well, if you undertake to give all that operate in this territory, it is another matter.

The CHAIRMAN: It seems to be competent for him to state what the fact is as to his road.

Mr. MAXWELL: I will ask to have the question repeated.

(The stenographer repeated the question as follows:

"Can you compare the rates on soap in the sixth and in the fifth class with the average earnings per ton per mile on your railway."

Mr. MATTHEWS: What year.

Mr. McLEOD: 1899 I propose to take. This is a statement showing the receipts of the C. H. & D. for soap in carloads from Procter & Gambler for the year ending June 30, 1899, compared with average rates received or the average amount received by the
1394 C. H. & D. on all other freight.

The CHAIRMAN: All other freight?

Mr. McLEOD: All other freight.

The CHAIRMAN: That is, soap included?

Mr. McLEOD: That would include soap.

The CHAIRMAN: On all freight; not on all other freight.

Mr. McLEOD: On all freight. The word "other" ought to be left out.

Mr. MAXWELL: We will offer this in evidence.

(The same is hereto annexed and marked "Exhibit No. 37, McLeod.")

Mr. McLEOD: The rate from St. Louis to Cincinnati, sixth class, is 12 cents, which is divided I. M. V. 2 cents and C. H. & D. or Vandalia and other connections 10 cents. The distance is 357 miles, which at the average of 62/100 of a cent per ton per mile would make $2.21 cents per ton or 11 cents a hundred.

The CHAIRMAN: That is, your average rate per ton per mile for the year ending June 30, 1899, was six mills and two-tenths.

Mr. McLEOD: Yes, sir.

The CHAIRMAN: And you multiply that——

1395 Mr. McLEOD: By the distance, 357 and it gives the rate received $2.21 per ton or 11 cents per hundred pounds. In our division of the rate we receive 10 cents, or 1 cent less.

Mr. MAXWELL: That is on soap?

Mr. McLEOD: On soap, sixth class. Since the first of the year, charging fifth class the rate is 15 cents, divided 2 and 13, so that we would receive on the fifth class rate 2 cents a hundred pounds more than the average receipts. The rate to Chicago figures nearly the same. We would receive 9.95 cents—practically 10 cents—out of the sixth class rate to Chicago and the distance is 321 miles by our road, which would give 10 cents. So that the rate to Chicago that we receive is practically the same on sixth class as the general average on our business.

The CHAIRMAN: Now, that is the sixth class?

Mr. McLEOD: Sixth class.

The CHAIRMAN: Have you figured fifth class?

Mr. McLEOD: It would be 15 fifth class and we would receive there 13 cents or 3 cents more on the Chicago business than on the general average.

Mr. WARRINGTON: Let me see if I understand. On the sixth class to Chicago what do you receive?

1396 Mr. McLEOD: On the sixth class we receive 10 cents.

Mr. WARRINGTON: I mean what do you receive from soap?

Mr. McLEOD: Ten cents, carloads.

Com'r CLEMENTS: Soap from where?

Mr. McLEOD: Ivorydale, or Cincinnati—from Ivorydale, their manufactory.

Mr. WARRINGTON: Now, fifth class.

Mr. McLEOD: Fifth class the rate would be 15 cents.

Mr. WARRINGTON: What do you receive in excess?

Mr. McLEOD: We receive 13 cents or an excess of 3 cents over the general average of business on fifth class, which is an increase of 21.42 per cent., if it all went into the fifth class. On New York the sixth class rate is 21½ cents which is divided I. & M. V. railway 1½ cents, C. H. & D. 3.64 cents, east of C. H. & D. road 16.36. The distance we haul it is 195 miles, which at the general average of six mills and two-tenths would produce $1.21 a ton or 6 cents per hundred pounds. We actually receive 3.64, which is 2.36 per hundred pounds less than our general average on the New York business. The fifth class rate is 26 cents, which is divided I. & M. V. 1½ cents, C. H. & D. 4.6 cents, east 19.9 cents, which yields
1397 us 1.4 cents less than our general average on the fifth class.

Mr. MATTHEWS: How far do you haul that?

Mr. McLEOD: We haul that 195 miles. We haul it to Toledo and allow 7 miles for the distance from Cincinnati to Ivorydale—actual haul 195 miles. Taking Buffalo, the sixth class rate is 13 cents divided I. & M. V. 1½ cents, C. H. & D. 4.67 cents, east 6.83 cents, which is 1.33 cents less than our general average. Fifth class is 15½ cents, divided I. & M. V. 1½ cents, C. H. & D. 5.7, east 8.3 cents, which is three-tenths of a cent less than our general average. I selected the four points rather than give a great number, as they seemed to me to be typical, two to the east, one—Buffalo—about half way, New York, representing the seaboard and New England and the other two to the west—Chicago and East St. Louis.

Mr. MAXWELL: On the Chicago and St. Louis rates, did you give the proportion the C. H. & D. got?

Mr. McLEOD: Not the C. H. & D. I gave the whole proportion from Ivorydale to East St. Louis for the line. I can separate that, if you desire it.

Mr. MAXWELL: Did your figures show what would be the general result, say of taking four typical points—what would be the
1398 general result as to whether this change in classification would put soap above or below—and if so, how much either way—the general average of your earnings per ton per mile.

Mr. McLEOD: I have not the figures on that. They are not complete enough to show it on their actual shipments.

Mr. MAXWELL: I suppose that would depend on how much went to the particular places, too?

Mr. McLEOD: Exactly; you would have to apply it to that statement here and work it out to get it exactly. But these figures are correct as far as they go.

Mr. MAXWELL: Take some nearby point. Take Hamilton, Ohio. What is the distance from Ivorydale to Hamilton on your road?

Mr. McLEOD: Eighteen miles.

Mr. MAXWELL: Is that the most direct line to Hamilton?

Mr. McLEOD: It is from Ivorydale.

Mr. MAXWELL: What is the rate and how is it divided.

Mr. McLeod: The rate is 4 cents.

Mr. Maxwell: How much do you get out of it?

Mr. McLeod: Two cents.

1399 Mr. Maxwell: For carrying 18 miles?

Mr. McLeod: Yes, sir.

Mr. Maxwell: Who gets the other two?

Mr. McLeod: The Ivorydale and Mill Creek Valley Railway Company.

Mr. Maxwell: What have you to say as to the reasonableness of the amount allowed the Ivorydale and Mill Creek Valley Railway Company for the service they perform.

Mr. Warrington: I object.

The Chairman: You asked Mr. Macdonald that question.

Mr. Warrington: I know.

Mr. Maxwell: We withdraw the question rather than have a debate upon it. We will stand on the bald facts there. Comparison has been instituted with reference to the charge that was made for the connection track at Cincinnati. Will you please state what that charge is and what facilities are accorded for the charge?

Mr. McLeod: The charge made by the connection track is $3.50 per car.

Mr. Maxwell: Does it make any difference what the weight of the car is?

Mr. McLeod: Well, practically not. On some cars they have made a charge more, but their general practice is to charge

1400 $3.50 a car.

Mr. Warrington: Are you speaking of something you know?

Mr. McLeod: The $3.50 per car?

Mr. Warrington: Yes, sir.

Mr. McLeod: I know it is $3.50 per car.

Mr. Warrington: You do not know that there are other rates?

Mr. McLeod: No, I have been told there are other rates, but I have no way of verifying that.

Mr. Warrington: Do you not know they charge $4.00 per car?

Mr. McLeod: No, sir.

Mr. Maxwell: What do you get for $3.50?

Mr. McLeod: So far as our road is concerned, they charge $3.50 and for that service they take the car and deliver it to any private siding on the connection track. They also deliver and give us the use of the Pennsylvania yard or team track in the east end of the city; they also give us the use of the Eggleston Avenue track, which runs out of a large district in the east end of Cincinnati. The team track delivery which they give us there is, in accordance with general custom in Cincinnati, considered to be equal to $2.00 per

1401 car. That is, the yard delivery of any railroad is always figured separately from a switching service performed to that yard and the estimate has been placed at $2.00 per car, and that is correct so far as our road is concerned. If a car is switched to our company to be delivered on our team tracks the switching charge is $1.50 in some cases; if it came from the other side of the city it

would be the connection street railway's charges and then there would be a charge of $2.00 for the delivery there.

Mr. MAXWELL: What is the length of the connection track?

Mr. MCLEOD: It is a litle over a mile, I think.

Mr. MAXWELL: Is it on a public street?

Mr. MCLEOD: Yes, sir; it is on one of the city streets and I think they have the use of two streets and also the public landing.

Mr. MAXWELL: Is it worked at certain hours?

Mr. MCLEOD: It can only be worked at night.

Mr. MAXWELL: Do you know that, if anything the Pennsylvania line pays the State of Ohio for the use of a portion of the track on Eggleston Avenue?

Mr. WARRINGTON: I object to that as being irrelevant.

1402 The CHAIRMAN: That is going too far, Mr. Maxwell.

Mr. MAXWELL: Now, how, if at all, does the size of the loads of freight affect its desirability?

Mr. MCLEOD: The heavier and larger the load, do you mean?

Mr. MAXWELL: Yes, sir.

Mr. MCLEOD: It is considered by all carriers to be more desirable to have a car loaded heavily or to have a larger car loaded than a smaller one.

Mr. MAXWELL: Can you tell us what the practice of the Procter & Gamble Company is in respect to the loading of their cars?

Mr. MCLEOD: Their load is not a very large one as a rule. They do not load to the capacity of the cars except in rare cases.

Mr. MAXWELL: Well, what is the ordinary capacity or the capacity ordinarily of the cars tendered the Procter & Gamble Company?

Mr. MCLEOD: The cars that they use under their own initials are 50,000 pound cars, according to the stencil on the car and those of the other railroads tendered to them vary from 30,000 to 60,000—possibly 80,000.

The CHAIRMAN: What is the minimum on soap?

1403 Mr. MCLEOD: Thirty thousand pounds.

Mr. MAXWELL: Have you made a calculation of the loading during a certain period of Procter & Gamble's cars?

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: Perhaps you will let us have the figures. Does it also show the capacity of the cars tendered?

Mr. MCLEOD: (producing paper) The cars that were shipped January, 1898, P. & G. cars, capacity 50,000; 11 cars. The average loading was 35,399 pounds, the capacity being 50,000. Out of the 11 cars, one car was loaded to its capacity. Ten of their cars were loaded in January, 1899. The average loading of those 10 cars was 30,600 pounds, the capacity being 50,000 pounds, and not one was loaded to its capacity. In June, 1899, there were 45 cars loaded, the average loading of which was 39,629 pounds. Of the 45, 40 were 50,000 capacity, 3 were 60,000 capacity, and 2 were 40,000 capacity, and there were 9 cars of the 45 loaded to their capacity. In September, 1899, there were 52 cars loaded, of which 31 had a capacity of 50,000; 9 of 60,000; 10 of 40,000; 1 of 45,000 and 1 of 32,000. The average loading was

37,270 pounds, and the number of cars out of the 52 loaded to their capacity was 3. From January, 1900, to June 4, 1900, there
1404 were 55 P. & G. cars shipped, their capacity all being 50,000. The average loading was 39,040 pounds and not one was loaded to its capacity. The total number of cars given was 228, of which 13 were loaded to their capacity. Among the whole of these cars were twelve 60,000 pound cars and their average loading was 34,454 pounds. The individual loading I can give you if you desire to have it. This is from actual business.

Mr. MAXWELL. Have you made a statement showing how the freight traffic on the C. H. & D. Railway is distributed with reference to the different classes of freight.

Mr. MCLEOD. (Producing paper). Yes, sir. This is taken from the Interstate Commerce Commission report.

Mr. WARRINGTON: Now, if I understand it, it is the distribution over your road according to all the classes.

Mr. MCLEOD: This is according to the classification required by the Interstate Commerce Commission dividing shipments into commodities and merchandise. This shows the proportion of the
1405 merchandise business to the commodity business.

Mr. MAXWELL: And also the various classes of merchandise?

The CHAIRMAN: Is that taken from the report of your company to the Commission?

Mr. MAXWELL: Yes, sir.

The CHAIRMAN: For the year ending June 30, 1899?

Mr. MAXWELL: For the years ending June 30, 1899, 1898 and 1897.

The CHAIRMAN: Do you report how your aggregate traffic is divided?

Mr. MAXWELL: We report the number of tons under the head of agriculture and in that we show how much grain and how much flour.

The CHAIRMAN: It is not a division under classes?

Mr. MAXWELL: No, sir.

Mr. WARRINGTON: When you allude to the Commission's classification you allude to a classified report?

Mr. MCLEOD: Yes, sir; they are required to be made in a certain way. It shows that for the year 1899 commodity rates were 67 per cent. and class rates were 33 per cent.

The CHAIRMAN: That is, only about one-third of your
1406 traffic for that year moved at the clas- rates?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: And two-thirds at the commodity rates?

Mr. MCLEOD: At the commodity rates, and in order to be sure we give the benefit, I can name you the commodities.

Mr. MAXWELL: You need not mind that. We will offer this in evidence.

The same is hereto annexed and marked "Exhibit No. 38, McLeod."

Mr. MAXWELL: Have you made a statement showing the advance in circles of miles in the rate on soap brought about by this revision of the classification?

Mr. MCLEOD: (Producing paper.) Yes, sir.

Mr. MAXWELL: We will offer that in evidence.

The same is hereto annexed and marked "Exhibit No. 39, McLeod."

Mr. MCLEOD: This is a statement which shows the advance from sixth to fifth class in the classification of soap made in Central Freight Association territory in accordance with various mileages—50 miles, from 6½ to 7½ cents; 1 cent. One hundred miles, 8 to 9 cents; 1 cent. One hundred and forty miles 8½ to 10 cents; 1 cent and a half. One hundred and seventy miles, 9 to 11 cents;
1407 2 cents. Two hundred miles 9½ to 12; 2½ cents. Two hundred and forty miles, 10½ to 13; 2½ cents. Two hundred and seventy-five miles, 11 to 14; 3 cents. Four hundred and fifty miles, 15 to 18; 3 cents. That is the advance from sixth to fifth.

The CHAIRMAN: Would that all depend on which direction or by what line you made the calculation?

Mr. MCLEOD: No, sir; it is in accordance with the scale in use by all the roads in Central Freight Association territory, called their minimum scale, and of which of course you have a copy.

The CHAIRMAN: So, in a radius of 450 miles——

Mr. MCLEOD: The advance is 3 cents a hundred pounds.

The CHAIRMAN: It runs from 1 to 3 cents.

Mr. MCLEOD: Yes, sir. If you translate that into per box, you get the per box increase.

Mr. MAXWELL: There seems to have been an abortive effort in January, 1895, to change the classification of soap. Do you know what it was that caused that effort to fail? Mr. Macdonald testified that there was a change for fifteen days, but it was never enforced?

Mr. MCLEOD: The classification committee recommended an advance on soap at their meeting late in 1894 and when put to
1408 the vote of the different roads, it was adopted and was issued to go into effect. Some of the Cincinnati roads protested and I believe gave individual notice that they would not be bound by the advance, so that within fifteen days it was put back.

Mr. MAXWELL: To what extent are the three roads that have access to Procter & Gamble competitors?

Mr. MCLEOD: They are very highly competitive.

Mr. MAXWELL: Are there any points of any size not reached by all the roads?

Mr. MCLEOD: Very few.

Mr. MAXWELL: Well, take Chicago.

Mr. MCLEOD: Chicago is reached by them all.

Mr. MAXWELL: Take St. Louis.

Mr. MCLEOD: All the larger cities are reached by them.

The CHAIRMAN: That is through these roads or their connections.

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: Traffic can start on either one of these roads, and reach all destinations, north, south, east and west, and does do so?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: That is a matter of fact, is it not?

1409 Mr. MCLEOD: Yes, sir; a matter of fact.

The CHAIRMAN: Does the C. H. & D. reach Chicago by its own rails?

Mr. MCLEOD: No, sir.

The CHAIRMAN: What is your Chicago connection?

Mr. MCLEOD: For freight we have two or three—the Monon, perhaps, is the principal one. We also send a good deal of freight to Chicago by the Erie.

The CHAIRMAN: And the B. & O. have their connection.

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: The Big Four runs directly from Cincinnati to Chicago?

Mr. MCLEOD: Direct. The Panhandle, too, runs direct.

The CHAIRMAN: Take Chicago, is there any material difference in the mileage from Cincinnati to Chicago by either of the routes.

Mr. MCLEOD: Well, the maximum would be 40 to 50 miles difference; that is, by the main routes.

The CHAIRMAN: What is the short line distance from Cincinnati to Chicago.

Mr. MCLEOD: It is figured at 300 miles, but it varies a mile or two from that.

1410 The CHAIRMAN: That is all.

Mr. MAXWELL: What was the difference between fifth class net, and sixth class.

Mr. MCLEOD: The difference between fifth class net and sixth class was about eleven per cent.

Mr. MAXWELL: Which was the higher class, fifth class, net weight, or sixth class gross weight.

Mr. MCLEOD: The fifth class net weight—considerably higher.

Mr. MAXWELL: Well, how did it come that Procter & Gamble got sixth class instead of fifth class net, after the former decision of this Commission?

Mr. MCLEOD: The Commission did not order the railroads, if I recollect the tenor of their order correctly, to make sixth class, but to make something that would be the equivalent of net weights. After figuring it over, it was found that there was no class between fifth and sixth that we could possibly put it in. We could not create a new class. If we continued to carry the soap at net weights in accordance with the implied order of the Commission, we would immediately have had suits from a great many other shippers to have their property carried at net weights. So after a full con-

1411 sideration of the matter for some months, when it came before the classification committee, as a solution of the question—while they did not wish to do it, yet they recommended that sixth class be put into effect on carloads. The difference to the railroads on the Chicago basis by putting it into sixth class as compared with the net weight on fifth was 2 cents per hundred pounds.

The CHAIRMAN: Against the roads.

Mr. McLEOD: Against the roads; so practically the railroads have been carrying the soap since the ruling of the Commission at 2 cents per hundred pounds less than they did before or than the order of the Commission required them to do.

Mr. MAXWELL: What do you know about that net weight practice? Is that net weight practice general?

Mr. WARRINGTON: Do you want to lead him again? Is it necessary to your case to do that?

Mr. MAXWELL: I wish you would suggest what I better ask him.

Mr. WARRINGTON: I would ssuggest to you to tell him what to testify about it.

Mr. McLEOD: My knowledge of that matter, of course, is general. I do not handle the freight in the depot, but to the best of
1412 my knowledge it was not a general practice.

Mr. MAXWELL: Well, Mr. McLeod, did you know of any practice—you say, to the best of your knowledge—what was your knowledge? I want to know everything you know about that. Tell the Commission.

Mr. McLEOD: I know that in Cincinnati itself for quite a time some of the shippers there did not get net weights. That was quite a time before the ruling of the Commission—well, previous to the year 1886.

Mr. MAXWELL: Who did get net weights previous?

Mr. McLEOD: Procter & Gamble.

Mr. MAXWELL: Did anybody else get net weights besides Procter & Gamble?

Mr. McLEOD: I do not recall any other getting them in Cincinnati. I know the Globe Company and Werk Company did not.

Mr. MAXWELL: Have you a resolution of your Cincinnati Association, bringing that matter up and providing that other people should get the same rates at Cincinnati?

Mr. McLEOD: Yes, sir; I have the original resolution.

Mr. MAXWELL: Let us have it.

(The witness handed the resolution to Mr. Maxwell.)

Mr. MAXWELL: This is the original record of the reso-
1413 lution made by the chairman of the Cincinnati Traffic Association and is a part of the record files of that office?

Mr. McLEOD: Yes, sir.

Mr. MAXWELL: Does it bear his signature?

Mr. McLEOD: It bears his signature.

Mr. MAXWELL: I wish you would read it.

Mr. WARRINGTON: Let me see it first.

(The resolution was handed to Mr. Warrington.)

The CHAIRMAN: What is the Cincinnati Freight Association?

Mr. McLEOD: The Cincinnati Freight Association is made up of the local roads in Cincinnati who have representatives who meet together and agree on usages or practices, &c.

The CHAIRMAN: Is this I. & M. V. road a member of that association?

Mr. McLEOD: It was not in existence then.

The CHAIRMAN: Is it still in existence?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Is that road a member of it now?

Mr. McLEOD: No, sir.

Com'r CLEMENTS: You mean the roads that come into
1414 Cincinnati, that converge there?

Mr. McLEOD: Yes, sir; the names of the roads are on this resolution, and the parties attending.

Mr. MATTHEWS: The net weight practice is not referred to here at all.

The CHAIRMAN: It is hard to see how that is competent. You have shown by Mr. McLeod that at the time the Procter & Gamble Company had their soap carried at net weights, other manufacturers of Cincinnati were paying on gross weights, and he says also, according to his knowledge, that up to a certain period Procter & Gamble was the only one whose soap was carried at net weights.

Mr. MAXWELL: The resolution passed by this association at a certain date removes any doubt about it.

Mr. WARRINGTON: It does not allude to net weights at all. I have no objection to the Commission seeing it, but you would have to have somebody swear that it relates to this subject.

Mr. MAXWELL: Mr. McLeod can testify as to that.

Mr. WARRINGTON: Very well. You can not help Mr. McLeod out by that paper. That paper is the work of somebody, I do not know whom—and does not relate in the remotest degree to the net weight practice. I object to it.

1415 The CHAIRMAN: It seems to me that we can get at the important fact in another way. Can not Mr. McLeod refresh his recollection on that document, and say up to what date the other manufacturer paid at gross weights?

Mr. MAXWELL: All right, what was the date?

Mr. McLEOD: My recollection is that up to the first of 1887 the other soap men paid on gross weights.

The CHAIRMAN: Prior to the first of January, 1887, other manufacturers at Cincinnati paid on gross weights, whereas Procter & Gamble paid on net weights, and after that all of them had their soap carried at net weights until the order of this Commission, and since then, I understand, soap has not been carried for anybody at net weights.

Mr. McLEOD: That is correct; yes, sir.

Mr. MAXWELL: Did the classification adopted by the Classification Committee contain any regulation as to gross weights and net weights, and if so, what?

Mr. McLEOD: It contains a rule in the classification which was there then and is now, that the articles are to be carried at gross weights. I can not give the words of the rule, but it is in the classification that all articles are to be carried at gross weights unless otherwise specified in the classification itself.

1416 The CHAIRMAN: It appears inferentially from the testimony here that some way or other they fell into a custom, as it is called, of taking soap at net weights, without any reason at all.

There is no authority in the classification for taking soap at net weights.

Mr. MAXWELL: On the contrary, it was in express violation of the terms of the contract, and, your honors, we do not concede that there was any such custom.

The CHAIRMAN: What I meant was that when witnesses here spoke of the custom, as I think Mr. McDonald did, he did not mean a custom founded on any provision in the tariffs or classifications, or rather a custom that had grown up at variance with them.

Mr. MAXWELL: Yes, sir.

The CHAIRMAN: You say there was not any such custom?

Mr. MAXWELL: Yes, sir.

The CHAIRMAN: That it was really a discrimination against shippers; that some had it and some did not?

Mr. MAXWELL: Yes, sir.

Com'r CLEMENTS: When does Mr. McLeod say that that ceased?

Mr. MCLEOD: The discrimination against shippers in Cin-
1417 cinnati ceased in 1887 and they all got it then.

The CHAIRMAN: For about two years.

Mr. MCLEOD: Yes, sir; and then it ceased when the roads themselves put into effect the classification in May, 1889.

Mr. MAXWELL: Now, did you have soap factories elsewhere on your road than at Ivordale or Cincinnati?

Mr. MCLEOD: We had them at Dayton.

Mr. MAXWELL: Did the Dayton manufacturer ship at net weights or gross weights?

Mr. MCLEOD: I can not positively say, because at that time there was no practical way of checking up their shipments. If they did, they did it contrary to order.

Mr. MAXWELL: Were you traffic manager at that time?

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: Did you authorize any goods to be shipped at Dayton at net weights?

Mr. MCLEOD: No, sir.

Mr. MAXWELL: Did you know of its being done?

Mr. MCLEOD: No, sir.

Mr. MAXWELL: Do you know now it was done?

Mr. MCLEOD: I do not know. They may have evaded the rules of the company.

1418 Mr. MAXWELL: If that was done, was it with your knowledge?

Mr. MCLEOD: No, sir.

Mr. MAXWELL: I understand you did have knowledge of the Cincinnati transactions, first with Procter & Gamble and then with the rest of them?

Mr. MCLEOD: Yes, sir.

Mr. MAXWELL: Did that practice ever apply to less than carload rates?

Mr. MCLEOD: I believe it did before the ruling of the Interstate Commerce Commission was put into effect.

Mr. MAXWELL: Since that time have you ever carried less than carloads at net weights?

Mr. McLEOD: I believe the Procter & Gamble business and all the other business went at net weights.

Mr. MAXWELL: Did you have knowledge of any soaps being shipped at carload rates, otherwise than at Cincinnati, first by the Procter & Gamble Company and after the 1st of January, 1887, by the other manufacturers?

Mr. McLEOD: You mean any soap?

Mr. MAXWELL: Yes, sir.

Mr. McLEOD: Yes, sir; I think I did.

Mr. MAXWELL: At what point.

Mr. McLEOD: I saw at one time expense bills of soap
1419 shipped from Zanesville that showed the weight was not the full weight. Whether it was the actual net weight of the soap, I can not say.

Mr. MAXWELL: Have you knowledge of any other point?

Mr. McLEOD: No, sir.

Mr. MAXWELL: Zanesville is not on your line?

Mr. McLEOD: No, sir.

Mr. MAXWELL: That is all.

Mr. COLSTON: I want to call your attention to a few facts which you stated, facts touching the condition of things at the time that this case of Procter & Gamble against the railroads, which was begun concerning the net weight practice was decided. The classifications involved in that case were classifications numbered 6 and 5, classification number 6 being made, as I recollect, some time in May, 1889. Were you on the official classification committee during the period of 1889 when Official Classification No. 6 was made and also at the time when Official Classification No. 5 was made.

Mr. McLEOD: Yes, sir; I have been on that committee since it commencement practically.

Mr. COLSTON: I want to ask you whether or not in making
1420 the Official Classification No. 5 and also in making the Official Classification No. 6, in each of which soap was put in the fifth class in carload lots, that committee knew that there was any practice at that time prevailing of carrying soap at net weights in carload lots instead of carrying it at gross weights?

Mr. WARRINGTON: We object.

The CHAIRMAN: It is hardly competent to state what the committee knew, is it?

Mr. COLSTON: I want to know whether it was discussed.

The CHAIRMAN: How can this witness testify to what the other gentlemen knew?

Mr. COLSTON: That would go perhaps to the question of the form of the question.

The CHAIRMAN: He can testify to what he knew or whether anything was said there which indicated that that was taken into account.

Mr. COLSTON: Well, I will alter the question. I will ask it this way: Was there at any time when Classifications Nos. 5 and 6 were

being formulated or discussed by the Classification Committee any statement by any member of the committee or by anybody else in the hearing or presence of any member of the commit-ee of
1421 the existence of any practice anywhere, even in Cincinnati, of charging at net weights instead of at gross weights?

Mr. MATTHEWS: We object to that.

The CHAIRMAN: We are inclined to think the objection is well taken. Mr. McLeod, has already said, as I understand, that he did not know himself of any practice elsewhere of carrying soap at net weights.

Mr. COLSTON: I will ask this question then, if your honors please——

The CHAIRMAN: Besides, I do not think we want to get into any controversy over what was testified to in the other proceeding.

Mr. COLSTON: I would like to put a question of this character; at any time that Classifications Nos. 5 or 6 were under consideration by the classification committee, or at any other time, did you ever communicate to any member of the Classification Committee the fact that there was a practice at Cincinnati of charging for soap in carload lots at net weights instead of at gross weights?

Mr. MATTHEWS: We object to that.

The CHAIRMAN: What difference does it make?

Mr. COLSTON: It would show that the committee had no knowledge, if your honors please; that it never received the assent of the Classification Committee, that practice.

1422 The CHAIRMAN: They could not give assent to a practice in violation of their own tariffs and classification rules.

Mr. COLSTON: That other proceeding seems to have proceeded on that theory.

Mr. MATTHEWS: Perhaps the testimony in the other case was so strong that Mr. McLeod did not care to tell what he testified to-day.

Mr. COLSTON: Perhaps it was not.

The CHAIRMAN: Let me see. Mr. McLeod is asked whether at any time, at any meeting of this classification committee, of which he is a member, he communicated to his associates on that committee the fact that at Cincinnati this practice of shipping at net weights prevailed.

Mr. COLSTON: That is the question, I believe.

The CHAIRMAN: We think he may answer that question, as to whether he communicated.

Mr. WARRINGTON: We except.

Mr. MCLEOD: I will ask to have the question repeated.

The question was repeated by the stenographer, as follows:

"Mr. COLSTON: I would like to put a question of this
1423 character: At any time that Classification Nos. 5 or 6 were under consideration by the classification committee or at any other time, did you ever communicate to any member of the classification committee the fact that there was a practice at Cincinnati of charging for soap in carload lots at net weights instead of at gross weights."

Mr. MCLEOD: I do not recall any, but I could not say I did

not. I do not recollect whether I ever brought any such communication before them or not.

Mr. COLSTON: That is all

Cross-examination:

Mr. WARRINGTON: Why did you not include locomotives and their cost in exhibit No. 32?

Mr. MCLEOD: I did not see any of the statements in regard to locomotives, this statement being obtained from the purchasing agent who did not buy locomotives as a whole, as I understand.

Mr. WARRINGTON: Why did you not include freight cars in the tabulation?

Mr. MCLEOD: For the same reason.

Mr. WARRINGTON: Why did you not include wages in Exhibit No. 32?

1424 Mr. MCLEOD: Because I obtained these from the purchasing agent and he had nothing to do with wages?

Mr. WARRINGTON: Why did you not go to someone besides the purchasing agent and get those figures?

Mr. MCLEOD: It did not occur to me. That is all. These are materials that are used and bought by the purchasing agent miscellaneously, and I supposed that that would be a pretty good guide.

Mr. WARRINGTON: The point of it is that you are giving comparative figures for the years 1892 to 1900, inclusive. Why would it not be more instructive if you include such items as equipment for freight purposes?

Mr. MCLEOD: Our road does not buy freight equipment, cars and locomotives, continuously, year by year. They buy round lots and then for years go without buying any. These, as I understand, are the current things the purchasing agent buys, and would be the prices of materials and not of the finished article.

Mr. WARRINGTON: Has your company bought any locomotives since 1892?

Mr. MCLEOD: I would not say positively, but I presume they have.

Mr. WARRINGTON: Well, I do not want a presumption.

1425 Mr. MCLEOD: I do not know.

Mr. WARRINGTON: What is your position with the company?

Mr. MCLEOD: Freight traffic manager.

Mr. WARRINGTON: And you do not know whether they bought any locomotives in eight years or nine years?

Mr. MCLEOD: I could not say I know it positively. I do not know their numbers, or anything of that kind.

Mr. WARRINGTON: You do not know the fact either? I do not ask what kind of locomotives.

Mr. MCLEOD: Since 1892 if you put it that way, I will say that our company has bought locomotives.

Mr. WARRINGTON: How many?

Mr. MCLEOD: I do not know.

Mr. WARRINGTON: How do you know they bought any?

Mr. MCLEOD: I have heard in an incidental way and have seen engines pointed out by people on the road who would say that was a new engine.

Mr. WARRINGTON: You do not know whether it was a passenger or freight engine?

Mr. MCLEOD: I do not.

Mr. WARRINGTON: How many freight cars has your company bought in the last nine years?

1426 Mr. MCLEOD: I do not know.

Mr. WARRINGTON: Do you know it has bought any?

Mr. MCLEOD: Yes, sir; it has bought some, how many, I do not know.

Mr. WARRINGTON: Who would be consulted in that department of the C. H. & D. Railroad as to whether any freight cars were needed for freight traffic? Would it be you or some other person?

Mr. MCLEOD: Yes, sir; I would be consulted.

Mr. WARRINGTON: Still you can not tell?

Mr. MCLEOD: I can not tell how many.

Mr. WARRINGTON: Well, does not that cut a rather important figure in an analysis of Exhibit No. 33? That is made to begin in 1888, when your ratio of expenses to earnings was 59.09 per cent., according to this. Was there an epoch in your road about that time?

Mr. MCLEOD: What do you by "an epoch?"

Mr. WARRINGTON: Did you spend any money on your railroad while Ives and Stayner had anything to do with it?

Mr. MCLEOD: I could not say positively.

Mr. WARRINGTON: You would not tell the Commission that they spent a dollar on it?

Mr. MCLEOD: The Commission would know as well as
1427 myself that they must have spent a dollar on it, but I do not know anything about the details of the expenditures of the road.

Mr. WARRINGTON: I know in 1895 you reach a point where the ratio is 67 and 69. In 1895 there was a consolidation, was there not, of the C. H. & D. road that was in charge in 1888 with other companies?

Mr. MCLEOD: I can not testify positively without looking up the record. I did not look that up.

Mr. WARRINGTON: You know there was a consolidation of the C. H. & D. with other roads about the year 1895, do you not?

Mr. MCLEOD: I know there was a consolidation, and without looking it up, take it for granted that it was about that time.

Mr. WARRINGTON: How much mileage was added by that consolidation?

Mr. MCLEOD: I do not know without looking it up.

Mr. WARRINGTON: Can you not approximate, Mr. McLeod? Can you not give some idea of what the mileage was before that consolidation? Do you know that?

Mr. MCLEOD: No, not without looking it up.

Mr. WARRINGTON: Have you any data here that you can use to refresh your memory?

1428 Mr. MCLEOD: Not unless I could refresh it from the Interstate Commerce Commission reports, and I presume I could.

Mr. WARRINGTON: There was a very large addition of mileage, was there not, at the time of that consolidation?

Mr. MCLEOD: My recollection is there was.

Mr. WARRINGTON: Tell us the road that ran down to Jackson, the name of that Company?

Mr. MCLEOD: The Cincinnati, Dayton and Ironton.

Mr. WARRINGTON: That ran down to the coal regions?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: That was not a road that would compare with the old C. H. & D. in point of equipment or roadbed, was it?

Mr. MCLEOD: No, sir.

Mr. WARRINGTON: Do you know about how much mileage it was?

Mr. MCLEOD: The mileage of the Ironton road, the straight road, without counting sidetracks, was about 168 miles.

Mr. WARRINGTON: Was that a road, the net earnings of which would be anything at all in proportion to those of the C. H. & D. proper, the old C. H. & D.

1429 Mr. MCLEOD: I should say not.

Mr. WARRINGTON: The Jackson road was a new road, I believe, a narrow gauge road at first, was it not? and it was promoted for speculative purposes?

Mr. MCLEOD: As far as I know, not.

Mr. WARRINGTON: What was the other road that was taken in by that consolidation?

Mr. MCLEOD: I do not recall any other at that time.

Mr. WARRINGTON: In 1895 was there not another road taken in?

Mr. MCLEOD: There was a road we operated, but it was not taken in.

Mr. WARRINGTON: How did you acquire possession?

Mr. MCLEOD: I do not know, but I believe it is operated under a lease of some kind.

Mr. WARRINGTON: You did acquire possession by lease?

Mr. MCLEOD: I suppose so.

Mr. WARRINGTON: What road is that?

Mr. MCLEOD: The Cincinnati, Dayton & Chicago.

Mr. WARRINGTON: Was that road comparable with the C. H. & D.?

Mr. MCLEOD: No, sir.

Mr. WARRINGTON: It was not in earnings or otherwise?

1430 Mr. MCLEOD: It was not comparable in either.

Mr. WARRINGTON: Or in tonnage?

Mr. MCLEOD: No, sir.

Mr. MATTHEWS: How about the Dayton & Ironton as to tonnage?

Mr. MCLEOD: The tonnage of the Dayton & Ironton was mostly coal.

Mr. WARRINGTON: In other words, when those roads were acquired—no matter how—it was understood by you, was it not, as well as the public generally, that the C. H. & D. had been heavily loaded—that is, the old C. H. & D.?

Mr. MCLEOD: No, sir; I think not; not in the acquisition of those roads?

Mr. WARRINGTON: Well, Mr. McLeod, the C. H. & D. has not bought modern equipment at any time? You have no high class locomotives on the C. H. & D.?

Mr. MCLEOD: I can not say, but my understanding has always been that when they bought anything they bought the latest modern equipment.

Mr. WARRINGTON: But can you tell us whether they have bought anything in the way of a freight locomotive in ten years. I will give you ten years, if you can tell me where you bought it

1431 and what capacity locomotive it was.

Mr. MCLEOD: I can not tell you where they bought it or its capacity.

Mr. WARRINGTON: Tell me where you have bought any modern freight cars in the sense of having large capacity.

Mr. MCLEOD: A great many of our cars are 50,000 and some are 60,000; I do not know how many.

Mr. WARRINGTON: Are not the vast majority of your cars 30,000?

Mr. MCLEOD: No, sir.

Mr. WARRINGTON: What proportion of them are 30,000 pounds capacity?

Mr. MCLEOD: I think hardly any.

Mr. WARRINGTON: Is the large proportion 40,000?

Mr. MCLEOD: I think the large proportion is 40,000.

Mr. MATTHEWS: Have you very many 80,000 pound cars?

Mr. MCLEOD: None at all that I know of.

Mr. WARRINGTON: The highest you have are 60,000?

Mr. MCLEOD: 60,000.

Mr. WARRINGTON: Now, have you strengthened your bridges to carry those high class locomotives?

Mr. MCLEOD: I can not tell you.

Mr. WARRINGTON: Have you constructed or reconstructed

1432 your roadway to carry the modern equipment?

Mr. MCLEOD: I can not tell you. I believe our roadway will do it. It does it every day in the year.

Mr. WARRINGTON: It carries the cars you have?

Mr. MCLEOD: It carries the cars of other companies every day.

Mr. MATTHEWS: It does not carry their locomotives?

Mr. MCLEOD: No.

Mr. WARRINGTON: Mr. McLeod, you say you were a member of the classification committee. Did the classification committee keep minutes?

Mr. MCLEOD: Of everything that was said, you mean?

Mr. WARRINGTON: Yes, sir.

Mr. MCLEOD: What kind of minutes?

Mr. WARRINGTON: Minutes of any kind.

Mr. McLEOD: They kept a record of the action of the committee, the results.

Mr. WARRINGTON: Did they preserve that record?

Mr. McLEOD: I believe they have.

Mr. WARRINGTON: Who has it?

Mr. McLEOD: Mr. Gill, chairman of the committee.

Mr. WARRINGTON: Where does Mr. Gill live?

Mr. McLEOD: In New York—his office is in New York.

1433 Mr. WARRINGTON: You had a secertary, had you?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: And Mr. Gill was chairman?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Now, does that record contain the reports of the committees?

Mr. McLEOD: Of what committees?

Mr. WARRINGTON: You spoke of committees—I suppose subcommittees.

Mr. McLEOD: I have no recollection of saying anything about committees.

Mr. WARRINGTON: Well, then, I misunderstood you. Does it contain anything said by the members of the committee?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: Does it keep a record of subjects that were discussed?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For instance would it show what was said on the subject of cereals?

Mr. McLEOD: No.

Mr. WARRINGTON: On starch?

Mr. McLEOD: No, it does not show the record of anything discussed by the committee; that is, it does not show the dis-

1434 cussion.

Mr. WARRINGTON: Who showed the tonnage of your road to that committee?

Mr. McLEOD: I do not know that that was shown the committee and I do not know who showed it.

Mr. WARRINGTON: Who showed the tons per train on any of the roads to the committee?

Mr. McLEOD: I do not think it was ever shown that I heard of.

Mr. WARRINGTON: Who showed to the committee the cost per ton per mile?

Mr. McLEOD: I have no knowledge on the subject.

Mr. WARRINGTON: I mean now of any of the roads in the official classification committee.

Mr. McLEOD: I have no knowledge on the subject at all.

Mr. WARRINGTON: Who showed to the committee anything about the changes that had been made on any of the roads in the official classification territory in the way of modern equipment?

Mr. McLEOD: I have no knowledge on that subject.

Mr. WARRINGTON: Or improvement of roadways—nothing of that kind shown?

1435 Mr. McLEOD: Nothing of that kind shown.

Mr. WARRINGTON: Who showed to the committee the rates that were being charged by the different companies?

Mr. McLEOD: No one that I know of.

Mr. WARRINGTON: So that the rates that were charged in New England or any of the States of the official territory were not before the committee?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: The committee, of course, would have nothing to do with rates?

Mr. McLEOD: Nothing.

Mr. WARRINGTON: I suppose it was understood by you, Mr. McLeod, that the change of classification had no signification if it did not change rates? You knew that, did you not? If it did not operate to change the rate at which an article of freight would be carried, why there was no reason for classification, was there?

Mr. McLEOD: That is the result of a change of classification.

Mr. WARRINGTON: You knew that?

Mr. McLEOD: Certainly.

Mr. WARRINGTON: That was not discussed in the committee, was it?

1436 Mr. McLEOD: No.

Mr. WARRINGTON: Now, then, did anyone show to the committee what the increased cost of operation was on the New York Central?

Mr. McLEOD: Not that I know of.

Mr. WARRINGTON: On the Pennsylvania system?

Mr. McLEOD: Not that I know of.

Mr. WARRINGTON: On any railroad in the official classification territory?

Mr. McLEOD: Not that I know of.

Mr. WARRINGTON: That did not appear?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: I suppose that you have ideas about what is good and what is bad freight have you not?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Has density anything to do with it?

Mr. McLEOD: It has.

Mr. WARRINGTON: Has freedom from injury in a wreck anything to do with the desirability of freight?

Mr. McLEOD: It has to do with the desirability of freight

Mr. WARRINGTON: Has low cost anything to do with it?

Mr. McLEOD: Remotely and incidentally; not always.

1437 You are speaking of desirability for freight?

Mr. WARRINGTON: Yes, sir.

Mr. McLEOD: Low cost has not so much to do with desirability for freight as some other items.

Mr. WARRINGTON: Still it has some relation?

Mr. McLEOD: In some articles.

Com'r CLEMENTS: You mean low value of the article?

Mr. McLEOD: There are many articles of very low value that are very undesirable.

Mr. WARRINGTON: Has freedom from injury by contact with other articles anything to do with desirability for freight?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Has freedom from qualities which would communicate injuries to other articles something to do with freight desirability?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Has the value of the service to the article anything to do with classification?

Mr. McLEOD: Has the value of the service—I wish you would make that a little more explicit. I would like to understand what you mean by that phrase.

Mr. WARRINGTON: Well, take grain for illustration: has
1438 the value which your carriage will communicate to that or bestow upon grain anything to do with the classification?

Mr. McLEOD: In other words, the increased value at destination, resulting from freight, has it anything to do with classification?

Mr. WARRINGTON: Yes, sir.

Mr. McLEOD: I should say very little.

Mr. WARRINGTON: That would be quite an insignificant item?

Mr. McLEOD: That item would not be very large.

Mr. WARRINGTON: And that is one of the opinions that prevails in the committee, is it not?

Mr. McLEOD: I could not say. That is my own opinion.

Mr. WARRINGTON: Well, now, I wish to go to another subject Mr. McLeod. On the C. H. & D. road, what proportion of the business is local?

Mr. McLEOD: You will have to define what you mean by "local."

Mr. WARRINGTON: Well, for the moment I will define it to mean that which is confined to your own road.

Mr. McLEOD: You mean that which originates at a station on our road?

1439 Mr. WARRINGTON: Yes, sir.

Mr. McLEOD: And goes to some other station on our road?

Mr. WARRINGTON: Yes, sir. How much of the business done on your road begins and ends on that road?

Mr. McLEOD: I could not tell you, but it is not a very large proportion.

Mr. WARRINGTON: You have no way of aiding us in that?

Mr. McLEOD: Not right here.

Mr. WARRINGTON: Are you able to state what part of your business is in less than carload lots which begins and ends on your road?

Mr. McLEOD: No, sir; but it is a small proportion.

Mr. WARRINGTON: Did you not prepare yourself with any figures on that subject?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: I take it then, that you can not tell the corresponding term. You can not tell the carload lots?

Mr. McLEOD: I can not tell the relation of the less than carload and carload shipments over our road, but my opinion is that the carloads preponderate over the less than carloads.

1440 Mr. WARRINGTON: But you do not know what proportion?

Mr. McLEOD: I do not know the proportion.

Mr. WARRINGTON: Are you able to state what proportion of your business which commences and ends on your road is carried at commodity rates; that is, local in the sense I have already expressed?

Mr. MCLEOD: No, sir; I can not.

Mr. WARRINGTON: Have you any idea or any figures to tell us the volume of business in any of the classes of the official classification which is commenced and ended on your road?

Mr. MCLEOD: I have not.

Mr. WARRINGTON: Would there be any difficulty in adding a fractional percentage or a percentage, no matter whether fractional or otherwise, to the rates which appear and are charged on your road?

Mr. MCLEOD: You mean would there be any difficulty in merely doing that?

Mr. WARRINGTON: Yes, sir.

Mr. MCLEOD: On the matter of fact?

Mr. WARRINGTON: Yes, sir.

Mr. MCLEOD: There would be no difficulty in making up
1441 a set of tables there. It would take some considerable time to do it—if that is what you mean.

Mr. WARRINGTON: That is what I mean.

Mr. MCLEOD: It would take a very considerable time to do it.

Mr. WARRINGTON: But there is nothing impossible about it?

Mr. MCLEOD: No, sir; nothing impossible.

Mr. WARRINGTON: So far as the mathematics are concerned it is a very simple thing, is it not?

Mr. MCLEOD: Yes, sir; so far as the mathematical part is concerned, it would be simple. It is the volume of work that has to be done. It is a mere question of mathematics. That is all, there would be in it.

Mr. WARRINGTON: Suppose you adopt another plan. Suppose you added a certain per cent. on first class, and to carry my illustration, let me suppose that would be one per cent., and you would put three quarters of a per cent. on second class, one half a per cent. on third class, one quarter of a per cent. on fifth class, and one eighth of a per cent. on the sixth; you do not mean to say to the Commission that there is any mathematical difficulty in doing that?

Mr. MCLEOD: Adding those to the figures?

1442 Mr. WARRINGTON: Yes, sir.

Mr. MCLEOD: No mathematical difficulty.

Mr. WARRINGTON: I suppose it would not take a very long notice to communicate to the customers that the rates found in the official classification were so increased?

Mr. MCLEOD: No, it would not take very long in the official classification.

Mr. WARRINGTON: A simple resolution on the part of the classification committee, concurred in by its principals, the railway companies, would accomplish that, would it not?

Mr. MCLEOD: It would so far as the mere resolution is concerned.

Mr. WARRINGTON: Then the notice could be sent out the same as the official classification or the rates?

Mr. McLEOD: The notice could be sent out. It would not take long to send the notice out, but it would take a great long time to carry the notice out. That is the trouble.

Mr. WARRINGTON: Well, I suppose there is a vast amount of detail in fixing rates or in changing rates in so large a territory with so many companies?

Mr. McLEOD: Yes, sir.

1443 Mr. WARRINGTON: That is true?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Well, now, conceding that, there would be no more trouble involved in the matters I have been suggesting than there would be in any other change, would there?

Mr. McLEOD: What? To make this grand general change?

Mr. WARRINGTON: Making what I will call a horizontal advance either of one class or of all the classes and let the percentages differ or let them be uniform. Would there be any more work about that than in any other change in that classification?

Mr. McLEOD: Yes, sir; there would be a great deal more work. I might illustrate just in one point.

Mr. WARRINGTON: You may illustrate if you wish.

Mr. McLEOD: The mere notice of a change of rates of that kind would not put them into effect or carry out the orders of the Commission in regard to the publication of tariffs. All that takes an immense time to prepare.

Mr. WARRINGTON: I am assuming that you will comply. I only want one thing at a time. So far as you and the customers are concerned, it could be done in the way I have suggested?

1444 Mr. McLEOD: We could notify them that such was the intention.

Mr. WARRINGTON: Now, suppose you carry with that the requirements of the Interstate Commerce Commission, would that involve any more labor than a general reclassification?

Mr. McLEOD: Possibly not, but I think it would carry more.

Mr. WARRINGTON: It would be substantially the same, would it not?

Mr. McLEOD: You mean a general change of the classification entirely?

Mr. WARRINGTON: Yes, sir; a general classification.

Mr. McLEOD: If we take the present six classes of the classification and make one of nine or ten—is that what you mean?

Mr. WARRINGTON: It might involve that.

Mr. McLEOD: Well, is that what you mean?

Mr. WARRINGTON: Well, it might be a change and might not mean that.

Mr. McLEOD: It would involve a great deal of work to change all the figures.

Mr. WARRINGTON: It is a question of time then, is it?

1445 Mr. McLEOD: Time and labor and money combined; all three.

Mr. WARRINGTON: There is not much money spent in a year on a freight tariff, is there?

Mr. McLEOD: Several million dollars every year.

Mr. WARRINGTON: By one company.

Mr. McLEOD: I think there are companies that spend probably a million dollars when they change all their tariffs.

Mr. WARRINGTON: I want to examine some of these exhibits to-night. I can not make myself familiar with them here in a moment and I was trying to ask you what I cared to about the other subjects in the hope that I could have the evening to look over them. I will ask you about that net weight practice. Now, Mr. McLeod, you knew about that net weight practice as well as you knew anything, did you not?

Mr. McLEOD: What net weight practice?

Mr. WARRINGTON: That existed back in the eighties.

Mr. McLEOD: Where?

Mr. WARRINGTON: At Cincinnati.

Mr. McLEOD: I knew that Procter & Gamble shipped their soap at net weights and for quite a time. When it commenced
1446 with them, I do not know.

Mr. WARRINGTON: Do you remember what you testified to on that subject before?

Mr. McLEOD: I do not.

Mr. WARRINGTON: Do you mean to testify to this Commission that you were keeping up a practice, a clandestine practice with the Procter & Gamble company?

Mr. McLEOD: Yes, sir; at that time we were, before we put it in with other shippers. I will not say it is clandestine, except to this extent that it was not general with the other shippers.

Mr. WARRINGTON: How did you happen to give it to that company?

Mr. McLEOD: I can not recall the circumstances of its commencement.

Mr. WARRINGTON: Was it in practice when you came there?

Mr. McLEOD: I could not say. I believe it originated with them before they went out to Ivorydale, but I can not positively say.

Mr. WARRINGTON: Well, it originated a number of years?

Mr. McLEOD: I think they enjoyed it a number of years,
1447 but what time they commenced it I do not know.

Mr. WARRINGTON: Did you tell the Commission here in 1890 in any testimony you gave that that was limited to the Procter & Gamble Company?

Mr. McLEOD: I do not recall doing so.

Mr. WARRINGTON: Why did you not do so?

Mr. McLEOD: I was not asked probably.

Mr. WARRINGTON: Is this your adjourning point, your honors?

The CHAIRMAN: Well, it is 5 o'clock. When you come to a convenient point——

Mr. WARRINGTON: I have reached that point now.

The CHAIRMAN: Well, we will adjourn until 10 o'clock to-morrow morning.

At 5 o'clock p. m. the Commission adjourned until 10 o'clock a. m., Wednesday, June 27th, 1900.

1448 Seventh Day.

WASHINGTON, D. C., *June* 27, 1900—10 a. m.

The CHAIRMAN: Gentlemen, if there is no objection, the stenographers will be instructed in writing out the minutes of this proceeding to omit the argument of counsel upon objections. The grounds upon which objections are based will appear, but the discussions, it seems to us, can be omitted from the record.

Mr. MAXWELL: We very heartily concur in that.

Mr. WARRINGTON: There is no objection to that.

Mr. A. H. McLEOD resumed the stand.

Mr. WARRINGTON: Mr. McLeod, you testified before the Commission in the old case of Procter & Gamble against the C. H. & D. Railroad Company and others, which was heard in 1890, did you not?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Do you remember the following questions being asked and the answers by you as I shall now read at page 273:

1449 "Q. What do you know of the circumstances under which the soap makers in Cincinnati were charged upon net weight instead of gross weight?

"A. It is a practice that originated in competition and was practiced chiefly by the Cincinnati roads in order to allow them to take care of one of their largest interests as against other parts of the country.

"Q. Did the Cincinnati road regard the soap business as a large industry?

"A. Yes, sir.

"Q. How long has that custom been prevailing?

"A. It has been prevailing for several years.

"Q. Do you regard this custom as on equality with rebates and drawbacks given before the Interstate Commerce law took effect?

"A. I think they had rebates occasionally in addition to the net weights.

"Q. Do you regard it as on the same equality as being a favor to secure business?

"A. Yes, sir.

"Q. Do you know the circumstances under which the practice was discontinued at Cincinnati?

1450 "A. Yes, sir; it was a general reform which grew out of the amendment of the Interstate Commerce Law and as far as possible all matters of that kind were discontinued.

"Q. Do you know who originated the scheme of abandoning this particular practice?

"A. It was brought about by the pressure of the different roads in the association and it was finally consented to by the manufacturers."

Mr. WARRINGTON: Were those questions asked of you and did you answer them in the manner in which I have read them?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Now at page 277—questions by Mr. Matthews:

"Mr. MATTHEWS: You stated that reason that the Cincinnati roads insisted on taking soap at net weights was because soap was considered as one of the principal articles of shipment out of Cincinnati?

"A. Yes, sir.

"Q. Now it wasn't considered any more a principal article of shipment from Cincinnati than sugar and coffee are from New York was it?

"A. I presume not.

"Q. Viewed from that standpoint there wasn't any better
1451 reason for shipping sugar and coffee from New York at a low rate than shipping soap from Cincinnati, competition fixed the rate in both cases?

"A. Yes, sir.

"Q. Cincinnati and New York are both in the official territory?

"A. Yes, sir.

"Q. You don't mean to say that the soap manufacturers at Cincinnati came voluntarily and agreed to give up shipments at net weights without any pressure being brought to bear on them?

"A. No, sir; not without any pressure.

"Q. It was not their own desire arising out of their own wishes whatever may be said about it was it?

"A. I think it was because they felt that the practice could hardly be justified under the amended law and also because of the establishment of inspection bureaus which would cause a great deal of trouble.

"Q. About the same time didn't they ask your committee or the representatives of your railroad that soap be put in the sixth class where it ought to be?

"A. I believe they did, not where it ought to be but where they
1452 said it ought to be, they asked to have it put in the sixth class."

Mr. WARRINGTON: Were those questions and answers put and made?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Was that not all that you testified to on that subject at that trial? Now, there is the book (handing record to witness).

Mr. COLSTON: Do you expect him to read that all over to tell you that?

Mr. WARRINGTON: I want an answer to it. He can state it from memory or otherwise.

Mr. COLSTON: You hand him the book and ask him whether that is not all he testified to on the subject.

Mr. McLEOD: (After examining.) I presume these records are correct; I have not looked at them carefully. That was taken down before the court in the usual manner and it appears as part of the records.

Mr. WARRINGTON: I will ask you to read it at the noon hour and answer the question upon reassembling.

The CHAIRMAN: The question, as I understand it, is whether what you have read embraces all of his testimony on that subject.

Mr. WARRINGTON: Yes, sir.

Mr. MATTHEWS: On the subject of the net weight practice.

1453 Mr. McLEOD: And in connection with sugar and coffee.

Mr. Warrington read two selections, one as to net weight and one as to the competition in respect to sugar and coffee from New York and Cincinnati as compared with soap from Cincinnati. My recollection is that I testified a little more than you read, but I will read it over and ascertain as to that.

Mr. MATTHEWS: On net weights.

Mr. McLEOD: On sugar and coffee.

Mr. WARRINGTON: I ask you whether you testified any more, in any different way than as stated in what I have just read to you; that is, at that trial, on the subject of net weights.

Mr. MATTHEWS: We do not ask him whether he did not testify anything more about sugar and coffee.

The CHAIRMAN: It is understood that what is wanted is whether what has been read covers all that you said at that time on the subject of net weights. You can examine the record at the noon recess and answer afterward. (See page 913.)

Mr. WARRINGTON: Referring to your exhibit No. 33, in which you give the ratio of expenses to earnings and the rate per ton per mile, I think——

Mr. McLEOD: Not rates per ton per mile.

Mr. WARRINGTON: The expenses per ton per mile.

1454 Mr. McLEOD: Amount of revenue received per ton per mile.

Mr. COLSTON: Earnings per ton per mile.

Mr. McLEOD: Yes, sir; earnings per ton per mile.

Mr. WARRINGTON: That is right. Did you get the data for that from Poor's Manual?

Mr. McLEOD: Yes, sir; with the exception of one year.

Mr. WARRINGTON: And that was what?

Mr. McLEOD: 1887.

Mr. WARRINGTON: Why didn't you put in 1887?

Mr. McLEOD: I could not find it.

Mr. WARRINGTON: Not in Poor's Manual?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: Was it not before you?

Mr. McLEOD: Not that I recollect of. My recollection is that the two volumes I examined gave that just as I have it.

Mr. WARRINGTON: Another thing: Why didn't you put in the gross expenses, including taxes, that were there, in connection with the total earnings?

Mr. McLEOD: I was not looking for that. I was looking for the net result so far as the effect on revenue was concerned, year by year, and expenses year by year.

1455 Mr. WARRINGTON: Did this have anything to do with it: In 1893 your gross earnings were $5,412,912, while your expenses, including taxes for that year were $3,568,632. Now compare that, say, with 1897, when your gross expenses, including taxes, were $3,228,681. The ratio of expenses to earnings will show differently and make a different impression from what it does when you carry those gross sums?

Mr. McLEOD: I could not say because I did not examine it.

Mr. WARRINGTON: It was right before you.

Mr. McLEOD: It was in the book?

Mr. WARRINGTON: In that very book.

Mr. McLEOD: It was in the book.

Mr. WARRINGTON: The book from which you took your figures?

Mr. McLEOD: Yes, sir; I presume it was; I did not look for it at all.

Mr. WARRINGTON: Was it not in the same table?

Mr. McLEOD: I presume it was; I did not look for it. The item you read is the gross earnings of the road, as I understand it, passenger and freight. I was not looking for anything connected with the passenger business, but altogether for something connected with the freight business.

Mr. WARRINGTON: I will ask you if the ratio of expenses to earnings did not include both passenger and freight?

Mr. McLEOD: I understand it did not.

Mr. WARRINGTON: I will compare figures with you and satisfy you.

Mr. McLEOD: I may be mistaken on that point.

1456 Mr. WARRINGTON: I will ask you if the ratio of expenses to earnings which you gave for 1893 was not 65.93?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: How far back did you go in this statement?

Mr. McLEOD: 1888.

Mr. WARRINGTON: Let me ask you if the ratio for 1888 was not 59.09?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1889, 60.13?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1890 it was 60.71?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: And 1891 it was 63.91?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: In 1892 it was 66.48?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: 1893 it was 65.93? Is that right?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: In 1894 it was 66.15?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: In 1895 it was 68.77?

Mr. McLEOD: Yes, sir.

1457 Mr. WARRINGTON: In 1897 it was 69.77?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Is that right?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: And in 1898 it was 69.70?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: Now, that is all you found in that table of Poor's?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: Now, when I look at that table and find the gross expenses including taxes in one column and the total earnings in another column for each of the years I have mentioned, you say I am including passenger with freight, do you not?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: Didn't you do that when you gave the ratio of expenses to earnings?

Mr. MCLEOD: If you will allow me to look at the book, I can answer the question.

Mr. WARRINGTON: I will ask for Poor's Manual.

Mr. MCLEOD: 1899 contains four or five years, and then I think there is another volume——

1458 Mr. WARRINGTON: What is that other volume?

Mr. MCLEOD: I think 1897. It takes two volumes to get the figures that I have here.

Mr. WARRINGTON: Now, while that book is coming, I will ask you another question. Your purpose in showing this table, Exhibit 33, was to show an increase of expenses, was it not? That was one of your objects?

Mr. MCLEOD: Yes, sir; it was to show the actual results of the business.

Mr. WARRINGTON: I will ask you whether in looking over your gross expense column you did not find, say, in 1893 that your expenses were over $3,500,000, while in 1897 they had come down to $3,228,000, and in 1896 they had reached $3,421,000, leaving off the hundreds. Do you expect by using these percentages in the way you have to prove that your expenses have been going up,—to prove by that paper that they have been going up—in the face of such figures as these?

Mr. MCLEOD: I have not examined that part of the table; therefore I cannot answer the question.

Mr. WARRINGTON: It was right before you—a part and parcel of what *did* you did get.

Mr. MCLEOD: I cannot say; I did not examine the table other than I spoke of. I made no selection from the table for any pur-

1459 pose of making any more favorable statement one way or another than the facts showed. I took the figures simply, and they speak for themselves, whatever they are.

Mr. WARRINGTON: I want to ask you in this connection as to the year 1887, the year you did not start with. Don't it show your ratio of expenses to earnings to be 63.49?

Mr. MCLEOD: I cannot say, for I did not look it up.

Mr. WARRINGTON: And that your ratio for 1888, the year following, that it came down to 59.09?

Mr. McLEOD: I cannot say as to 1887, for I did not look at it

Mr. WARRINGTON: I wish to call your attention to Poor's Manual of Railroads for 1894, at page 419, and ask you to tell me whether 1887 is not given in immediate connection with the year 1888 and following as to what you call ratio of expenses to earnings?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: What was that ratio in 1887?

Mr. McLEOD: 63.49.

Mr. WARRINGTON: What was it for 1888?

Mr. McLEOD: 59.09.

Mr. WARRINGTON: What is it the next year?

—. ——.

1460 Mr. WARRINGTON: You have given the others. I want one more; give the next one.

Mr. McLEOD: 1887, 63.49; 1888, 59.09; 1889, 60.13; 1890, 60.71; 1891, 63.91; 1892, 66.48; 1893, 65.93.

Mr. WARRINGTON: We desire to offer this table on the page given, from Poor's Manual, and then also from page 304 of Poor's Manual, for 1899, giving another table down to 1898.

Mr. MAXWELL: What page did you say from 1894?

Mr. WARRINGTON: Page 419, Poor's Manual of 1894. The reason for offering this is because the witness obtained his data from that, your honors, and I want to have those figures considered in, without reading them now. I wish to ask whether Poor's Manual, in the same connection in which I have cited you to other features does not give your net earnings.

Mr. McLEOD: I believe it does.

Mr. WARRINGTON: I will ask you if they have not increased. You may go back to 1891; that is as far as I think it shows, and then come down to 1898. I think you will find that there has not been a break in your increase of net earnings, except in the year 1887, when it dropped—no, there has not been any, if I read

1461 rightly; there has been a steady increase.

Mr. MAXWELL: What page are you reading from?

Mr. WARRINGTON: Page 304 of the Manual for 1899. What were your net earnings as shown by dividends for 1891?

Mr. McLEOD: $444,569.

Mr. WARRINGTON: And 1892, they were $445,089?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1893, $445,344?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1894, $445,623?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1895? $444,900? Is that right?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1896, $482,800?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1897, $564,040?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: For 1898, $567,318?

Mr. McLeod: Yes, sir; I understand you to ask whether the net earnings as shown by dividends are not as given.

Mr. Warrington: Yes, sir.

Mr. McLeod: Dividends do not include all net earnings;
1462 only that part of the net earnings, my understanding is, that applies among the stockholders is included there.

Mr. Warrington: Give the rest. There may be more of it.

Mr. McLeod: I will give you one item. Right underneath is the word "Balance;" the first item in the column is "available revenue." That means revenue, I understand that is left after the gross expenses and taxes are deducted, and that available revenue is used up in interest, dividends and balance. The first year, 1891 $444,569 were paid as dividends, leaving the balance of $670,622, whereas in the year 1898 the dividends were $567,318, with a balance of only $72,927. In the year before, 1897, the dividends were $564,040, and there was a deficiency in the balance of $12,340, which I understand to mean that the available revenue of that year, which was $1,398,670, was not sufficient to pay the dividend by more than $12,000.

Mr. Warrington: How did you happen to increase your dividends from $482,000 in 1896 to $564,000 in 1897, leaving off the hundreds? Do you know how that happened?

Mr. McLeod: I do not. It may be stated here in this report.

1463 Mr. Warrington: Do you know how you made no increase or not so much in 1898?

Mr. McLeod: I do not.

Mr. Warrington: Can you give me what your dividends were in 1899? They do not seem to be there.

Mr. McLeod: I cannot. I have not the annual report with me.

Mr. Warrington: Can you give them for 1900?

Mr. McLeod: No, sir.

Mr. Warrington: Can you give the balance for 1899?

Mr. McLeod: I cannot. 1900 is not completed yet.

Mr. Warrington: I suppose that is so.

Mr. McLeod: It might be available revenue, that is, what is left over after the taxes, etc., are deducted according to this table in 1891 was $1,681,641, while available revenue left over in 1897 was $1,398,670, or nearly $300,000 less and in 1898 the available revenue was $1,487,215, or nearly $200,000 less than it was in the year 1891. That I think answers the point about net earnings.

1464 Mr. Warrington: Let me ask you, do any of the figures which you have given us exclude passenger traffic?

Mr. McLeod: I did not look at that point (after examining) the only portion of my statement that refers to freight alone is the average amount received. The ratio of earnings to expenses includes the entire traffic.

Mr. Warrington: Passenger as well as freight?

Mr. McLeod: Yes, sir.

Mr. Warrington: Could you tell me whether the reports in Poor's Manual are made by your Company to the publishers of that work?

Mr. McLEOD: I can only repeat the words of our Auditor who furnishes the report. I can only give his statement.

Mr. WARRINGTON: Do you know whether those reports correspond with the reports made to the Interstate Commerce Commission?

Mr. McLEOD: I believe they do not exactly. I think, as in many reports the year ends at a different time. I think the form required by the Interstate Commerce Commission is rather different also from the form in which the items are furnished to Poor's Manual. Just what those differences are I do not know.

1465 Mr. WARRINGTON: Now, referring to Exhibit 38, which is distribution of freight traffic, as shown by you, I want to know if you have the means of extending that to 1887.

Mr. McLEOD: Allow me to see the exhibit.

Mr. WARRINGTON: Are you able to tell anything about your rates from 1887 down to the present time?

Mr. McLEOD: In a general way the rates——

Mr. WARRINGTON: I want figures. I mean your average freight rates.

Mr. McLEOD: That is what I was going to say—the average in a general way.

Mr. WARRINGTON: Was the rate on grain as high or higher in 1887 than in 1899?

Mr. McLEOD: I believe it was higher; I cannot say positively.

Mr. WARRINGTON: If you cannot give me figures, I do not want to take up the time.

Mr. McLEOD: I cannot give you figures.

Mr. WARRINGTON: I wish you would refer to your Exhibit 37. Look at it and tell the court what it is, so that they will know what you are talking about.

1466 Mr. McLEOD: This statement shows the receipts of the C. H. & D. road for soap, in carloads, from Procter & Gamble for the year ending June 30, 1899, compared with the average rate per ton per mile (62/100 cents) received by the C. H. & D. road on all freight. I selected four places, East St. Louis, Chicago, New York and Buffalo, at the figures precisely from the rate to show what the C. H. & D. would receive in 1899 on sixth class, and on the statement is a further notation, which was not referred to, that the earnings may be reduced by delivery charges at destination—that is, switching charges.

Mr. WARRINGTON: Your road does not run to a single point you give there, upon which you made out Exhibit 37. Is that not so?

Mr. McLEOD: No, sir; it does not.

Mr. WARRINGTON: East St. Louis, Chicago, Buffalo and New York?

Mr. McLEOD: No, sir; it does not.

Mr. WARRINGTON: You used your rate per ton per mile as though you carried the stuff through to those points, didn't you. You didn't give the rates on your connecting lines to any one of those cities?

Mr. McLEOD: No, sir.

1467 Mr. WARRINGTON: Now, take from Cincinnati to Chicago. What is the short line? Tell us what it is and what is its length.

Mr. McLEOD: I cannot give you the precise figures, but I can give you the mileage which is considered the short mileage in our calculations—300 miles.

Mr. WARRINGTON: How much longer than that is your road?

Mr. McLEOD: I would like to have an Official Guide in order to give the precise figures.

Mr. WARRINGTON: What did you use in making up your exhibit?

Mr. McLEOD: I took the figures.

Mr. WARRINGTON: Where did you get the figures?

Mr. McLEOD: From the Official Guide, I believe. I am not positive. I have the figures here now in the Guide, given as 321 miles.

Mr. WARRINGTON: By your road?

Mr. McLEOD: Yes, that this freight traveled by.

Mr. WARRINGTON: That is calculated on your road?

Mr. McLEOD: On 321 miles—the distance we hauled the freight.

Mr. WARRINGTON: You know those rates are fixed by the short line?

1468 Mr. McLEOD: I do.

Mr. WARRINGTON: You know you had to carry it with reference to the short line?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Now tell us what the short line is to St. Louis.

Mr. McLEOD: I believe the Baltimore & Ohio Southwestern is.

Mr. WARRINGTON: What is the distance, or, if you can tell it easier, you can tell the difference between yours and that.

Mr. McLEOD: The distance from Cincinnati is 342 miles, to which you add 7 miles, which makes 349 miles from Ivorydale.

Mr. WARRINGTON: Is that the short line?

Mr. McLEOD: I believe it is.

Mr. WARRINGTON: What is your distance?

Mr. McLEOD: 357 miles.

Mr. WARRINGTON: That is a difference of how much?

Mr. McLEOD: A difference of 8 miles.

Mr. WARRINGTON: Now, take Buffalo: Do you haul any soap for the Procter & Gamble Company to Buffalo?

1469 Mr. McLEOD: I believe we have.

Mr. WARRINGTON: Tell me when.

Mr. McLEOD: I think the statements show.

Mr. WARRINGTON: I know; but do you do any of that traffic?

Mr. McLEOD: You mean all the way through to Buffalo?

Mr. WARRINGTON: To Buffalo proper; do you do any of the traffic of the P. & G. Co.?

Mr. McLEOD: I cannot say positively without looking over the statement.

Mr. WARRINGTON: Is there a reason why you would not?

Mr. McLEOD: No, sir; none that I know of.

Mr. WARRINGTON: Is there a more favorable line than yours to Buffalo?

Mr. McLEOD: No, sir; we do not think so of course.

Mr. WARRINGTON: I know that is — hard question. I would not

expect you to admit it. Now, to New York—do you do any of the P. & G. traffic to New York?

Mr. McLEOD: I believe we have done some.

Mr. WARRINGTON: You know it is a very meagre traffic, is it not?

Mr. McLEOD: Small. I used one point in the East, New
1470 York, to illustrate the figures, not because we moved a very large traffic there, but because it is a sort of indicative point. We do carry quite a good deal of their business to New England points, to Boston and various other points in New England; the statement there shows it.

Mr. WARRINGTON: The point you were seeking to establish by your Exhibit 37 was to show that you would lose money in hauling soap at the prices.

Mr. McLEOD: I didn't say that. I said that the hauling of soap to New York, or to Buffalo is representative of that whole eastern territory. The C. H. & D. would haul all that business at a less rate per ton per mile than the general average of our business would give us—not that we would lose money. I did not go into that part of it.

Mr. WARRINGTON: Then you did not mean to say that you could not carry soap for less money than your average?

Mr. McLEOD: I did not mean to say that we could not carry soap at less than our average. We did carry it and do carry it.

Mr. WARRINGTON: You mean that soap does not pay as much as it costs you to carry it?

The CHAIRMAN: No, he does not say that. He is not talking about the cost.

1471 Mr. McLEOD: I am talking about this business of Procter & Gamble's, and taking representative points where the bulk of the business is supposed to go; it does not yield us any more on the Sixth Class basis than our average receipts on our whole business, and in many cases it does not come up anywhere near that. That is what I mean.

Mr. WARRINGTON: Did you make up calculations for Lima, Toledo or Detroit?

Mr. McLEOD: I did not I believe.

Mr. WARRINGTON: Are those not the places where you haul the bulk of Procter & Gamble's soap that you carry?

Mr. McLEOD: No, sir; I believe not.

Mr. WARRINGTON: To what places do you carry the bulk of that traffic?

Mr. McLEOD: Allow me to refer to the statement showing the actual business. Would you like me to read the destinations this soap goes to?

The CHAIRMAN: You were asked if Lima, Toledo and Detroit were not the principal points to which you carry Procter & Gamble business.

Mr. WARRINGTON: And points in Michigan.

Mr. McLEOD: I can read this without much difficulty as to carload business.

1472 Mr. WARRINGTON: That is in evidence.

Mr. McLEOD: But I can put it in in reply to the question. It is your own evidence.

Mr. COLSTON: Those are your statements.

Mr. MATTHEWS: Of course he can use that. There is no question about that.

Mr. MCLEOD: This is a statement of actual shipments of the C. H. & D. for the five months, January, February, March, April and May, and we would like to put that in evidence.

The CHAIRMAN: It is in evidence.

Mr. MCLEOD: Then I would like that to be the answer to the question as to where it goes.

The CHAIRMAN: I would like to ask a question. You made some figures showing how the rate per ton per mile that you get on this soap compares with your average rate per ton per mile, and you name points which, while they appear to be illustrative of different sections of the country, are all off your line. Your line runs to Toledo?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: See how your figures will apply to Toledo. What do you get per ton per mile for taking soap to Toledo?

Mr. MCLEOD: On Toledo soap, proper?

1473 The CHAIRMAN: What do you get on that business?

Mr. MCLEOD: Do you mean on what goes to and through Toledo?

The CHAIRMAN: Take Toledo; if you take a carload of soap to Toledo for Procter & Gamble, how much does it pay you per ton per mile?

Mr. MCLEOD: I hav-n't those rates here (after making calculations) the Sixth Class to Toledo is 10½ cents, from which the I. & M. V. Terminal of 2 cents is deducted, leaving 8½ cents, or $1.70 per ton, which divided by the actual mileage, 195 miles, seven miles short of the Cincinnati distance, gives 8.7 mills.

The CHAIRMAN: If you carry soap for Procter & Gamble at Sixth Class rate to Toledo, you get 8.7 mills, against 6.2 mills, the average on your whole traffic?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: Give us the same thing with reference to Indianapolis. Take an interstate shipment now, and Indianapolis is on your road I believe?

Mr. MCLEOD: Yes, sir. To Indianapolis the Sixth Class rate is 8 cents, from which is deducted this 2 cents terminal, leaving 6 cents, or $1.20 per ton. The actual distance is 117 miles, which will give a rate per ton per mile of 1.02 cents—practically 1 cent—per ton per mile.

1474 Mr. WARRINGTON: That would be 4 cents above your average in round numbers?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: Would those two illustrations, Mr. McLeod, warrant this general inference: that where you carry soap for Procter & Gamble to destination points on your own system, the rate per ton per mile at Sixth Class rates exceeds your average rate per ton per mile on your whole traffic?

Mr. MCLEOD: Yes, sir; I believe it would.

The CHAIRMAN: Of course when you speak of your average rate per ton per mile on your whole traffic that includes all the through traffic in which you participate as well as that handled between points on your own system?

Mr. MCLEOD: Yes, sir. It should be understood that the through traffic which we handle greatly preponderates over anything that goes to our local points.

The CHAIRMAN: And that pays a less rate per ton per mile?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: So, to make any fair comparison you would need to take the local traffic—your average rate per ton per mile on all traffic local to your system and then compare it with the rate per ton per mile on soap.

1475 Mr. MCLEOD: Yes, sir; to separate the local. That would be the proper way to do it.

The CHAIRMAN: Do you know what the average rate per ton per mile was last year on your System on all traffic which was purely local?

Mr. MCLEOD: No, sir.

The CHAIRMAN: Have you any data from which that calculation can be made?

Mr. MCLEOD: I doubt if we have it in any consolidated form. There is no uniform distinction, as to what is local freight, unless you mean to confine it to what is shipped from one point on any road to another point on that road.

The CHAIRMAN: I mean traffic wholly handled by your line.

Mr. MCLEOD: I believe that could be provided.

The CHAIRMAN: But you have no data here?

Mr. MCLEOD: No, sir; but I believe that could be provided from our records.

The CHAIRMAN: Of course the rate per ton per mile received on any item of traffic, or the average rate per ton per mile on all traffic depends a good deal on whether it is local traffic which you handle wholly, or whether it is long distance traffic carried in greater or less part by connecting lines.

1476 Mr. MCLEOD: Would it assist your honors any if we would prepare from the statements which embody the actual shipments over our roads in five months and compute the average rate per ton per mile on those shipments and compare them?

The CHAIRMAN: What would you compare it with?

Mr. MCLEOD: With what we received on actual shipments.

The CHAIRMAN: That can readily be ascertained.

Mr. MCLEOD: We would compare it then with the general average of our whole business.

Mr. MAXWELL: You would have to compare it with the rate per ton per mile on the same traffic.

The CHAIRMAN: Let me ask you again. Speaking generally of the allowance in Official Territory, where you participate in through routes and through rates, is the aggregate rate, after deducting this switching charge of the I. & M. V. road, divided on the mileage basis?

Mr. McLEOD: Not strictly.

The CHAIRMAN: But approximately so?

Mr. McLEOD: Yes, sir; approximately.

The CHAIRMAN: So on traffic going to Boston, for example, you get a less rate per ton per mile for your share of that haul than to Buffalo?

1477 Mr. McLEOD: Yes, sir.

The CHAIRMAN: Or to Albany?

Mr. McLEOD: Or to Albany, or any of those points East. We would be glad to furnish you with copies of all of our percentages worked out, if you want them.

The CHAIRMAN: No, I am not asking for anything of that sort. The comparison would be valueless unless you have the same basis in each case.

Mr. WARRINGTON: Do you remember the change of minimum for freight car loads in the year 1898?

Mr. McLEOD: I remember that the minimum was changed. What date it was changed I do not remember.

Mr. WARRINGTON: It was recently, was it not?

Mr. McLEOD: Comparatively recent. You mean on soap, don't you?

Mr. WARRINGTON: Yes, sir.

Mr. McLEOD: The classification shows that.

Mr. WARRINGTON: Was it not changed in the Spring of 1899, I am requested to ask.

Mr. McLEOD: I would like to see the classification.

Mr. WARRINGTON: I asked if there was a change made in the minimum capacity for freight loads.

Mr. McLEOD: I answered that there was recently, but I cannot give the precise date.

1478 The CHAIRMAN: Do you mean on soap?

Mr. WARRINGTON: Yes, sir.

The CHAIRMAN: When was the minimum weight raised to the present amount?

Mr. McLEOD: I could not give the precise date. The classification, I believe, will show what the date was.

The CHAIRMAN: Is there not some one here who can answer that question at once? When was the minimum carload rate on soap made what it is now? What Mr. Warrington wants to know is when that was raised to 24,000 pounds.

Mr. WARRINGTON: I can get along without that now.

The CHAIRMAN: Let us settle that question now, if all can agree about it; or it can be looked up later and go in the record if you are not prepared to answer now.

Mr. WARRINGTON: The average loading which you gave yesterday as of January, 1898, shows that Procter & Gamble were loading 35,399 pounds. That was right, was it not?

Mr. McLEOD: I believe so.

Mr. WARRINGTON: I am reading from your paper. Now, that was when your minimum was 24,000 pounds?

1479 Mr. McLEOD: I presume that will be shown when we get the date of that change.

The CHAIRMAN: Pardon me one moment, Mr. Warrington. About that question of average loading. I want to see if you thought there was any difference between the figures presented by Mr. McLeod, yesterday, and the inferences which we could draw from Mr. Macdonald's testimony. I understood Mr. Macdonald to say that it was 24,000 pounds and that you had to ship that much to get the benefit of carload rates, and he said a great many of your customers, perhaps a large majority of them, did not want more than the minimum carload at one time, and therefore that a majority of the shipments were at the minimum carload rates, though frequently you filled a car up to the maximum. Do you understand that Mr. McLeod's statement of averages justified or required any different inferences in that regard than was drawn from Mr. Macdonald's own statement?

Mr. WARRINGTON: It would show better than Mr. Macdonald thought; but the immediate point that I was wishing to make plain, that we were loading nearly 50 per cent. above the minimum capacity at the time he gave the figure.

The CHAIRMAN: Of course this last question is quite pertinent if it now appears that the minimum carload in January 1898 was only 24,000 pounds, and the average of their shipments was 35,000 pounds.

1480 Mr. McLEOD: In P. & G. cars and operated by them, whose capacity is 50,000 pounds. These statements that I have had prepared and which was put in is, I believe, to show that their claim that soap was such a desirable freight and could be loaded to the capacity of the car was not borne out, for it shows that it was not loaded to the capacity of the car.

The CHAIRMAN: Your statement was to call attention to the difference between their average loading and the capacity of the cars in which that traffic was shipped.

Mr. McLEOD: Yes, sir.

Mr. COLSTON: Referring to Mr. Macdonald's testimony, you remember the fact, perhaps, that Mr. Macdonald stated to me that they never got any 60,000 pound cars.

The CHAIRMAN: I happen to remember that. I see now the difference between Mr. McLeod's basis and the one which Mr. Warrington was enquiring about. Mr. McLeod is contrasting the average weight of Procter & Gamble's shipments with the capacity of the cars in which those shipments are carried. Do you gentlemen agree as to when this minimum was raised?

Mr. McLEOD: I am informed by one of the experts that the classification was changed April 1, 1899.

The CHAIRMAN: That is subject to correction, of course. For the purpose of this inquiry, until shown otherwise, we will as-
1481 sume that this increase was made to take effect on April 1st, 1899.

Mr. WARRINGTON: You spoke of having made averages with re-

spect to cars owned by Procter & Gamble. You do not mean that, do you? I mean P. & G. cars.

The CHAIRMAN: The cars mentioned by Mr. Macdonald in his testimony, with Procter & Gamble on them?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: You do not mean to say that those shipments are made in cars other than those?

Mr. MCLEOD: No, sir. One of my statements gave the run of their shipments.

Mr. WARRINGTON: Now have you any data which has been taken before this trial, when you began to prepare for this trial, any record which will show your average tons per car on your line?

Mr. MCLEOD: I presume we have.

Mr. COLSTON: I think that has been answered by somebody.

Mr. WARRINGTON: It was answered by Mr. Casanave as to the Pennsylvania Railroad to be 18 tons on that road. Are you able now from any source which can be said to be a record of your average tons per car by which you can tell us?

1482 Mr. MCLEOD: I am not positive whether it appears in Poor's Manual or not.

The CHAIRMAN: Do you know whether that has been worked out?

Mr. MCLEOD: I presume it has.

The CHAIRMAN: You could refer to some data and state what the fact is in that regard? Your records show, for example, last year what was your average carload loading?

Mr. MCLEOD: I think, so, sir.

The CHAIRMAN: The report to the Commission shows that, does it not?

Mr. MCLEOD: I have no doubt the report to the Commission shows it, sir. It does not seem to be given here (referring to Poor's Manual). I have no doubt the report to your Commission does.

Mr. WARRINGTON: At any rate, you cannot answer it now?

Mr. MCLEOD: No, sir; not accurately.

Mr. WARRINGTON: You said in your direct examination that the advance from net weights to gross weights was only 11 per cent. What figures did you take as to the weight of Procter & Gamble's soap boxes?

Mr. MCLEOD: I took those given by yourselves in this testimony.

Mr. MATTHEWS: At what time?

1483 Mr. MCLEOD: In this testimony, by Mr. William Cooper Procter, in this case the other day—83 pounds for Lenox, and common soaps, and 70 pounds for Ivory.

Mr. WARRINGTON: Do you know whether the boxes to which Mr. Procter alluded weighed the same as the boxes weighed when the net weight practice existed?

Mr. MCLEOD: I do not.

Mr. WARRINGTON: In 1887.

Mr. MCLEOD: I do not.

Mr. WARRINGTON: If you were told that there was a difference of at least 4 pounds, it would make some difference in your statement of the percentage, would it not?

Mr. McLEOD: It would.

Mr. WARRINGTON: Look at Exhibit 36, and tell the Commission what that is—I mean in a word.

Mr. McLEOD: This is a statement showing comparative increases from New York and Ivorydale on less than carloads and on carload shipments to a number of points—Cleveland, Detroit, Grand Rapids, Indianapolis, Louisville, Chicago, Peoria, East St. Louis and Cairo. It shows the difference in cents per hundred pounds, the increase, and also per box on Lenox Soap and per box on Ivory Soap on fifth and sixth classes. The object of the statement is to show
1484 that while there is an increase on shipments from Ivorydale, to all of these points by the advance in classification, that to the points named here there is a larger increase on shipments made by the manufacturers in the East—New York.

Mr. COLSTON: A larger increase in the other direction.

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Does that refer to carloads?

Mr. McLEOD: This refers to both; one statement is for less than carloads and one is for carloads.

Mr WARRINGTON: Did you make any corresponding statement with New York as a center?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: Why didn't you do that?

Mr. McLEOD: Because your people, I believe, have made it in your direct evidence.

Mr. WARRINGTON: You spoke of the advance that had been made in freight from Cincinnati to Indianapolis. What would be a corresponding distance from New York? Would it be Albany?

Mr. McLEOD: No.

Mr. WARRINGTON: Is it not approximately the same?

Mr. McLEOD: Albany is, I believe, 150 miles and Indianapolis by the short line, I think, is 110 miles.

1485 Mr. WARRINGTON: Take Poughkeepsie.

The CHAIRMAN: That is only 75 miles. What is your distance to Toledo from Cincinnati?

Mr. McLEOD: 202 miles. Ivorydale is 7 miles out of Cincinnati, but we figure Ivorydale as a part of Cincinnati in all our general arrangements, but it is actually 7 miles out.

Mr. WARRINGTON: Is the rate the same?

Mr. McLEOD: The rate is always the same; yes, sir.

The CHAIRMAN: What is your distance to Buffalo?

Mr. McLEOD: Via Toledo or via some other junction? We reach Buffalo by two or three ways, your honor, the longest by way of Toledo.

The CHAIRMAN: Take the distance which would control the rate; about what is it?

Mr. McLEOD: Our distance is 491 miles by way of Toledo. That is the longest; and the short line distance, I think, is 450, or 446 miles.

The CHAIRMAN: Then Buffalo is about half way between New York and Cincinnati?

Mr. McLEOD: Yes, sir.

1486 The CHAIRMAN: There is a point about equally distant b
tween New York and Cincinnati. How does this change i
classification show as to the advantage of a Cincinnati over a Ne
York soap dealer in shipping to Buffalo?

Mr. McLEOD: I have not the figures in mind. I think the ra
is practically the same.

Mr. COLSTON: There is no difference.

Mr. McLEOD: No material difference. I can have those figur
furnished if desired.

The CHAIRMAN: What I had in mind is this: It appears by you
statement yesterday and other testimony here that the disadvantag
so to speak occasioned by this classification tends to increase with di
tance, and I wanted to know if it was about the same in both dire
tions.

Mr. McLEOD: It operates in both territories with the exception o
that territory described by them, governed by water, and really n
classification can adjust itself to such a state of affairs.

Mr. WARRINGTON: When you took off the 20 per cent. did you d
it to restore those people down there to the fourth class.

Mr. McLEOD: No, sir; we did not.

1487 Mr. WARRINGTON: You did not know what you we
doing, did you?

Mr. McLEOD: We did not know as to the figures at all what
would do. We did not have the figures before us.

Mr. WARRINGTON: Now referring to your Exhibit No. 39 yo
put down only carload rates?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Why didn't you put down less than carloa
rates?

Mr. McLEOD: I had no particular reason.

Mr. WARRINGTON: Shipments to points within a hundred mil
radius would likely be in less than carload lots, would they not, M
McLeod?

Mr. McLEOD: Do you mean there would not be any carloads?

Mr. WARRINGTON: The most would be in less than carload lo
within that radius, would they not?

Mr. McLEOD: If you speak of the number of shipments as com
pared with the weight of the shipments; I should think that th
number of shipments would be more; but when you come to put on
full carload of 30,000 pounds against 50, or 100 shipments of sepa
rate boxes, I cannot answer that question.

1488 Mr. WARRINGTON: Well, do you know anything about i
as to weight?

Mr. McLEOD: As to distribution of carloads as compared wit
less than carloads?

Mr. WARRINGTON: Yes, sir.

Mr. McLEOD: Nothing more than what was produced here—tha
your carload business is 65 per cent. and the less than carload busi
ness 35 per cent.

Mr. WARRINGTON: But you do not know whether that applied t
the territory within a radius of 100 miles of Cincinnati?

Mr. McLEOD: I do not; because it is given as a general average

Mr. WARRINGTON: When you make up your Exhibit 39 and omit less than carload lots, you do not know whether you are stating a price that would be representative of the business or not, do you?

Mr. MCLEOD: I know I am taking a price that represents the carload business—65 per cent.

Mr. WARRINGTON: But you do not know how it would be affected in the territory mentioned if you include less than carload lots?

1489 Mr. MCLEOD: I have not given the increase in less than carload lots.

Mr. WARRINGTON: Then you do not know?

Mr. MCLEOD: I do not know, but I could easily make a table corresponding, if you wish it; whether these carloads went 60 miles, 100, or 450, these represent wherever the carloads went.

Mr. COLSTON: Is that a statement from their figures?

Mr. MCLEOD: From the actual results—not from theirs.

Mr. MAXWELL: Mr. McLeod, can you tell us how the proportion of so called local freight, general freight, or Procter & Gamble's compares with the proportion between shippers generally?

Mr. WARRINGTON: I believe you are asking him now for his knowledge of our business and other peoples, and I am only speaking of it to admonish the witness.

Mr. MCLEOD: I do not believe I can give that information.

Mr. MAXWELL: Mr. Warrington has asked you whether you made this reduction of 20 per cent. in third class in order to give the New York manufacturers fourth class. I wish you would state why you made that reduction?

The CHAIRMAN: He stated yesterday that the principal, if

1490 not the only, reason for making that reduction was to restore the difference between carloads and less than carloads to the difference prevailing before the classification was changed.

Mr. MAXWELL: Perhaps that was the inference your honors drew.

The CHAIRMAN: He stated that was the main, or only reason, as I remember it. It has been stated here in substance, if not specifically, that one of the complaints made of this change in classification was that it increased the difference between carloads and the less than carload rate. That was one of the grievances which the shippers alleged as a consequence of this change in classification.

Mr. MAXWELL: Mr. McLeod, from this statement on page 304 of Poor's Manual for 1899, I wish you would state what the decrease in the average earnings per passenger per mile has been, in percentage, from 1891 to 1898?

Mr. WARRINGTON: Is that relative, your honors?

The CHAIRMAN: Let us see where we stand. The table was put in evidence yesterday, which shows the percentage of net earnings to gross receipts on this road for a series of years, without any explanation, as I remember it, of the sources from which those earnings

1491 are received. Now on cross examination it appears that he has included the passenger earnings and the expenses of both branches of the service. Now, you might perhaps argue that the reasons why the percentage of expenses has increased is owing to changes in the results of their passenger service, and I understand

this question to be asked to develop the fact further and meet any argument or inference that you might seek to draw from any testimony before us.

Mr. MAXWELL: That is the purpose.

The CHAIRMAN: I think it is competent in that respect, Mr. Warrington?

Mr. WARRINGTON: I was only seeking to show that those figures do not prove what they purport to.

The CHAIRMAN: He stated this morning, developing what otherwise might have been obscure, in answer to your question that the earnings per ton per mile of the figures given by him related to the entire business of the company, passenger and freight. He may answer.

Mr. MCLEOD: The average rate per passenger per mile in 1891 was 1.92 cents per mile. In 1898 it was 1.76 cents a decrease of 16/100. The percentage of decrease is 8.3 per cent.

1492 Mr. MAXWELL: Now give us the percentage of decrease on the average earnings of freight per ton per mile for the same years.

Mr. MCLEOD: The average rate per ton per mile in 1891 was .85 even, and in 1898 .62 even; the percentage of decrease 27 per cent.

Mr. MAXWELL: When the minimum weight for the carload was changed what did it apply to—to soap alone?

Mr. MCLEOD: To the minimum carloading of all heavy freight.

Mr. MAXWELL: For what reason was that?

Mr. MCLEOD: Because the freight cars had increased in their capacity and their capacity for weight, and it was thought that 30,000 pounds would be a reasonable loading to be required in the cars which were then prevailing.

Commissioner CLEMENTS: State some of the articles which were affected in the same way at the same time.

Mr. MCLEOD: Sugar, starch, coffee, cement, iron articles of all kinds, except a few very light ones which are specifically named, chemicals, such as soda ash, copper—all sorts of things; I could name a hundred of them.

Mr. MATTHEWS: Will you look up coffee and see if the minimum was changed at that time or since?

Mr. MCLEOD: I was stating from recollection: (after referring to classification) coffee in single or double sacks 30,000 pounds.

1493 The CHAIRMAN: Those last figures you gave us related to receipts and they show that the average amounts received for carrying a passenger one mile diminished less than the average amount received for carrying a ton of freight one mile?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: That is all it shows.

Mr. MCLEOD: Yes, sir. The freight has decreased about three times as much as the passenger?

Mr. MATTHEWS: How about coffee ground or roasted?

Mr. MCLEOD: Coffee ground or roasted has a minimum of 24,000 pounds.

Mr. MATTHEWS: It was not raised on that part of the coffee traffic.

Mr. McLEOD: Not on coffee ground or roasted.

The CHAIRMAN: Any further questions?

Commissioner CLEMENTS: You have indicated here, Mr. McLeod, a downward tendency in net revenue, reduction of net revenue, covering seven or eight years back. Now is it not a fact that is generally well known to a large extent that the revenue would have been larger if the full rates had been collected and kept during these previous years. That they were largely diminished because rates were not maintaind?

Mr. McLEOD: I believe your honor is correct on that
1494 point—that if all roads had been strictly honest with each other and maintained their full commodity rates as published by the tariffs, and class rates as published by the tariffs, there would have been a good deal more money received by the railroads, but the rates have been no better maintained on commodities, or articles not included in the classes—not so well maintained on the commodities as on the classes.

Commissioner CLEMENTS: And that has probably amounted to many millions each year?

Mr. McLEOD: You mean in the whole country?

Commissioner CLEMENTS: Yes, sir.

Mr. McLEOD: It would if applied to the whole business of the country.

Commissioner CLEMENTS: It makes it a little unsatisfactory to try a case on paper tariffs.

Mr. McLEOD: I understand this case is not on the tariff question, but on the proper classification of these articles, no matter what rates are applied.

Commissioner CLEMENTS: But you bring rates in in connection with the classification, and it would be much more satisfactory if rates had been collected and kept.

Mr. McLEOD: I fully agree with you on that.

Mr. MAXWELL: I suppose you did not give away anything
1495 voluntarily?

Mr. McLEOD: Well, I think not.

The CHAIRMAN: Do you carry soap in carload quantities out of Cincinnati, or that immediate vicinity for other manufacturers than the Procter & Gamble Company?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Name one or more large concerns.

Mr. McLEOD: The Globe Soap Company.

The CHAIRMAN: Take the Globe Soap Company. Do you reach them by any branch track.

Mr. McLEOD: We reach them over the Connection Track.

The CHAIRMAN: How is their traffic delivered?

Mr. McLEOD: To us, do you mean?

The CHAIRMAN: Yes, sir.

Mr. McLEOD: As to carloads, we have cars sent over to their works, which are on the connection track and they load them there. Their less than carloads they have to haul to us by team.

The CHAIRMAN: Do they load them on the Connection Track?

Mr. COLSTON: They have a switch running into their works?

Mr. McLeod: I think not. There is a track running in front of their place belonging to the Connection Track and they load
1496 right into the cars.

The Chairman: Where are their less than carload shipments delivered to you?

Mr. McLeod: At our depot.

The Chairman: Brought there by drays?

Mr. McLeod: Yes, sir.

The Chairman: Do they get an allowance for delivering traffic to you?

Mr. McLeod: Yes, sir.

The Chairman: What allowance?

Mr. McLeod: One cent per 100 pounds.

The Chairman: Does that apply to both carloads and less than carloads?

Mr. McLeod: It applies to only what is actually hauled to our depot.

The Chairman: On that they get an allowance of one cent per 100 pounds?

Mr. McLeod: Yes, sir. And that is for equalizing the haul to our depot, which is very unfavorably situated in Cincinnati as compared with the Panhandle depot, or the Big Four depot. It is not an allowance in any way supposed to affect the rate. It is an al-
1497 lowance to put ourselves on an equality with the other roads.

The Chairman: Is the through rate the same as from Ivorydale to all points?

Mr. McLeod: Yes, sir; except around Cincinnati.

The Chairman: But to points at a very considerable distance they are the same?

Mr. McLeod: Yes, sir.

The Chairman: The Globe Soap Company gets an allowance of one cent on less than carload shipments?

Mr. McLeod: Yes, sir; hauled to our depot.

The Chairman: What on carload shipments?

Mr. McLeod: If hauled to the depot they would get the same.

Mr. Warrington: What do they pay per car?

Mr. McLeod: One cent per 100 pounds.

The Chairman: The Globe Company is allowed by your Company one cent per hundred pounds on shipments, carloads and less than carloads, delivered at your station?

Mr. McLeod: Yes, sir; delivered at our freight station.

The Chairman: Where delivered to cars at their factory on the Connection Track, what allowance do they get?

Mr. McLeod: Nothing.

The Chairman: Do you pay the Connection Track Company anything?

1498 Mr. McLeod: The Connection track cost.

The Chairman: How much does that amount to?

Mr. McLeod: $3.50 per car; $3.50 to the Connection Track and $1.50 to the Baltimore & Ohio South Western, which connects us with the Connection Track—$5.00 in all.

The CHAIRMAN: So in that case you give out $5.00 a car, out of the rate?

Mr. MCLEOD: Yes, sir.

Mr. COLSTON: But you do not give it back to the shipper?

Mr. MCLEOD: We do not give it back to the shipper; no, sir.

The CHAIRMAN: The one cent per hundred pounds does go to the shipper.

Mr. MCLEOD: If hauled to the depot.

Mr. COLSTON: But on cars loaded at the Globe Soap Company, they get nothing.

Mr. MCLEOD: No, sir; they get nothing. The one cent is not a part of the rate. It costs a great deal more to haul to our depot than to other depots.

Mr. COLSTON: Do the other carriers pay anything?

Mr. MCLEOD: The other carriers are supposed to pay nothing.

The CHAIRMAN: You do not know whether they do or not?

1499 Mr. MCLEOD: No, sir; if they did it would be in the nature of a rebate or concession.

Mr. MAXWELL: Is there an agreement as to that?

Mr. MCLEOD: There is an agreement that none of the other carriers shall pay any drayage to their depots. Our depot being so unfavorably located is the only one authorized to pay the charge, and the Erie Railroad, operated over our road, which gets the same benefit as our road. It is fully understood by all the railroads in Cincinnati.

Mr. MAXWELL: What is the distance that they have to bring their less than carload freight to your depot by wagons?

Mr. MCLEOD: Nearly two miles I should think.

Mr. MAXWELL: What is the distance by way of the extension track and the B. & O. S. W. to your road?

Mr. MCLEOD: I think the distance is between 1½ and 2 miles.

Mr. COLSTON: I understand you to say that the Baltimore & Ohio South Western does not give the Globe Soap Company anything at all whether they receive shipments in carload lots, or hauled to the depot.

The CHAIRMAN: He says thay have agreed not to.

Mr. MCLEOD: They have agreed not to.

Mr. COLSTON: You do not know?

1500 Mr. MCLEOD: No, sir; I do not know.

The CHAIRMAN: What other large soap manufacturers are there in Cincinnati shipping over your line?

Mr. MCLEOD: Werk & Company, are large soap manufacturers. I believe they are in business now. They are not located on our tracks, but are in the northern part of the city.

The CHAIRMAN: Do they get an allowance for freight delivered to you?

Mr. MCLEOD: No, sir.

The CHAIRMAN: Does any other manufacturer than the ones you have named?

Mr. MCLEOD: No, sir; they do not at all.

Commissioner CLEMENTS: Is there any agreement that they shall not have one?

Mr. McLeod: The agreement in regard to this one cent per hundred pounds is made between the different railroads in Cincinnati; there is a defined territory drawn on the map of Cincinnati which marks out the territory from which we can pay any shipper one cent per hundred pounds. It is not intended to be a discrimination in favor of any person, manufacturer or any shipper but it is to give all shippers within a certain territory this one cent to equalize the cost of hauling to our depot, from other territory we pay nothing.

1501 Nor does any other company pay anything. That is the whole object of the one cent allowance.

The Chairman: Do any of your tariffs show that that allowance is made?

Mr. McLeod: I think not sir.

The Chairman: You say it is well understood in Cincinnati?

Mr. McLeod: All the roads understand the arrangement.

Mr. Colston: And the shippers understand it?

Mr. McLeod: Yes, sir.

The Chairman: Within that certain territory all shippers are granted that allowance by your company?

Mr. McLeod: Yes, sir.

The Chairman: And outside of it none of them are?

Mr. McLeod: No, sir; they are not.

Mr. Matthews: Does the Panhandle which is in the east end of Cincinnati allow the same one cent to persons situated over near your depot?

Mr. McLeod: They do not, and the reason is that our road is put at their service for any business they wish to take out of the east end. They use our road and agree that in consideration of that, that they will not pay the one cent.

The Chairman: I understood you to say yesterday, Mr. McLeod, that the three lines that connect with the Procter & Gamble

1502 Company are sharply competitive with each other for the business of the Procter & Gamble Company?

Mr. McLeod: Yes, sir.

The Chairman: And to nearly all destinations that either one of the three could be the initial carrier?

Mr. McLeod: Practically; yes, sir.

The Chairman: Under joint tariffs?

Mr. McLeod: There might be some few local points where they would not be competitive.

The Chairman: But under the joint tariffs which have been made and now in effect either one of the three lines can be the initial carrier to all principal destinations?

Mr. McLeod: Yes, sir.

The Chairman: How is that business divided up between the three lines?

Mr. McLeod: It is divided up by Mr. Macdonald without any consultation with the three lines. He reserves the right to divide it as he pleases.

The Chairman: That is entirely in his hands?

Mr. McLoud: Entirely in his hands.

The Chairman: And there is no agreement to divide it?

Mr. McLoud: We rely on his fairness.

1503 The Chairman: Do you know how it is divided, in fact, as between the three lines, as to the amount carried by each?

Mr. McLeod: I do not, but it would be close to one-third each. I have no definite knowledge on that point.

The Chairman: Your company is a party to this agreement in regard to the I. & M. V. terminal charge?

Mr. McLeod: Yes, sir.

The Chairman: And you of course knew about it at the time it was made.

Mr. McLeod: Yes, sir.

The Chairman: Why did you allow them so much as that?

Mr. McLeod: We were forced to by the matter of competition in the making of it.

The Chairman: How forced to?

Mr. McLeod: May I repeat the hisory of the arrangement?

The Chairman: I do not see any other way to do it.

Mr. McLeoad: When the/ first located there, the C. H. & D. was the only road that had tracks adjacent to their property and they put side-tracks into their works for the purpose of having their material brought in. After they had been established there for a while they saw the necessity for getting some switch engines

1504 and of doing a good deal of their own work within their own boundary; that is, they did a good deal of moving of cars in their own boundary, and some years after they located there they made a request that we compensate them for the work they claimed to do for our company.

Mr. Maxwell: Up to that time you paid nothing?

Mr. McLeod: Up to that time we had paid them nothing. In 1891, I think, after a conference between Procter & Gamble and our Vice President and General Manager, Mr. Waite, it was agreed that we would pay them $400 a month towards these expenses, whatever they might be, they agreeing to do their own work, including the placing of cars and the loading of freight. (See correction by Mr. McLeod, page 1143.)

Mr. Maxwell: Was there any other road that reached there at that time?

Mr. McLeod: Not at that time. This arrangement went along some time, until the Big Four got their tracks in. Then Mr. Macdonald or Mr. Brown, whoever represented them at that time, made an agreement with the Big Four for an allowance. That was entirely a different transaction, and that allowance was made

1505 by the hundred pounds and graded. It was not very long before we understood that the Big Four road had an arrangement by the hundred pounds, and our arrangement by the month did not equal the amount that they received from the Big Four; that is, it was not as remunerative to them, and we were approached to have our arrangement changed to the same basis—to a per hundred pound basis. We took the $400 per month that we were paying them, and in order to have our basis at least uniform in regard to the way of paying it, we converted it into what it was equal to in cents per hundred pounds on the traffic that we were then carrying in car-

loads; and in the year 1893 that amount was equivalent to 1½ cents per hundred pounds on the through or Trunk Line business and 1 cent per hundred pounds on Central Traffic Association business, and $1.50 per car on the inbound traffic. We made them an offer to pay them those figures, which we did pay until May 1, 1894. The Baltimore & Ohio Southwestern—I do not know that they had tracks in there at that time, but they got into the works by paying us a switching charge and they made them an allowance. The allowances of the Big Four, the B. & O. S. W. and ours were all different and
1506 arranged separately. Then we had a conference of the roads and we agreed to make a uniform charge. That uniform charge went into effect May 1, 1894. It was 1 cent per hundred pounds on all business outbound and $2.00 per car inbound on all traffic that we were getting a revenue on in the way of a rate, and $1.00 per car on coal which came inbound. That arrangement lasted from May 1, 1894, until January 1, 1896, nearly two years; and towards the latter part of that arrangement it was found that one or more of the roads had increased this allowance as a concession in the way of securing additional business, and in that way general dissatisfaction occurred, and we got together again.

Mr. WARRINGTON: Who?

Mr. MCLEOD: The railroads—the C. H. & D., the Big Four, and the B. & O., and the Erie, and after exposure of the arrangements between all the roads, it was then agreed to put the figures as they are at present arranged. That went into effect by all of the roads on January 1, 1896.

Mr. MAXWELL: That was a written contract.

Mr. MCLEOD: That was in the nature of a written agreement.

Mr. COLSTON: Read here in evidence?

1507 Mr. MCLEOD: Yes, sir; and it has continued that way ever since. The figures arranged in the agreement were practically the maximum figures that any road had agreed to allow them, and it was the result you might say of competition in that way. Thus they had an agreement or contract with one of the roads that out of the switching charge of $3.00 a car from Cincinnati to Ivorydale that they should receive 50 cents. It was a contract and could not be voided and therefore all of the roads were compelled to allow them 50 cents out of the switching charge in order to be on a parity. I believe that is a correct account of the way in which these terminal charges came about.

Commissioner FIFER: Do you pay that because you think it is a reasonable sum?

Mr. MCLEOD: I think it is just about twice too much.

Commissioner FIFER: Do you pay that amount because you think it is a reasonable sum for the service rendered by the Procter & Gamble Company, or do you pay it, or any portion of it, in order to get business from them?

Mr. MCLEOD: We regard it as an unreasonable amount for
1508 the service rendered. We pay it to put ourselves on a parity with the other roads and in order to be in a position to get a share of the business.

Commissioner FIFER: So that the other roads will not get all of the business?

Mr. MCLEOD: So that the other roads would not get all of the business.

The CHAIRMAN: You are all in the same position. Why do you pay an amount which you say is an unreasonable one?

Mr. MCLEOD: The arrangement was made at a time when there was not a great deal of good faith among the railroads, and, as I have already said, one of the previous arrangements was not lived up to by some of the roads, and we all felt that we were practically compelled to meet the situation.

1509 The CHAIRMAN: The different roads were using those allowances as a device for underbidding each other?

Mr. MCLEOD: Yes, sir; practically.

The CHAIRMAN: And that became known or apparent in one way or another?

Mr. MCLEOD: Yes, sir; in one of our moral fits it became known.

The CHAIRMAN: And you finally consented to an arrangement which you say represented the maximum amount ever granted by any road?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: Whether it did represent the maximum you do not know in fact?

Mr. MCLEOD: No, I do not know positively. I only know what was told me.

The CHAIRMAN: All the service they render you on out-going traffic is to haul the car from where they load it over to your tracks?

Mr. MCLEOD: Yes, sir.

The CHAIRMAN: And on ingoing freight they take it from your track and haul it wherever they want the material?

1510 Mr. MCLEOD: Yes, sir.

The CHAIRMAN: The balance of their work is transferring the material from one part of the plant to another?

Mr. MCLEOD: I understand so.

The CHAIRMAN: And you say for the service rendered that it is an entirely unreasonable sum?

Mr. MCLEOD: I think so.

The CHAIRMAN: What in your judgment would be a reasonable sum?

Mr. MCLEOD: I hardly think I could give a definite figure, when you take into consideration that we do not do a similar service for any other concern.

The CHAIRMAN: But when you say that this is an entirely unreasonable sum, you must have some reason for it.

Mr. MCLEOD: The cost for handling a car of freight from our yard where we come to deliver it over their tracks is such a small item in addition to what we are always doing with our switch engines right there, that I could hardly say what would be fair. I do not suppose it would cost our people 25 cents additional to what they are already doing at Ivorydale to place the cars where they want them and take them out loaded.

1511 The CHAIRMAN: Your statement now seems to imply that the value of the service is only a small part of the allowance you grant.

Mr. McLEOD: Yes, sir.

The CHAIRMAN: And the other roads are in substantially the same position or situation?

Mr. McLEOD: The service that they do for the other roads might be a little greater distance, but in all other essentials I believe they are the same.

Mr. MATTHEWS: You do not include the loading of the car in that 25 cents, I suppose?

Mr. McLEOD: No, sir; when we place a car on a private switch or side-track for any other concern they load the car and we do not pay anything. We do not pay for the loading of freight when we place a car on the side-track of any other manufacturer.

Mr. MATTHEWS: How about less than carload lots?

Mr. McLEOD: Less than carload freight *is* hauled to the depot we load, and if Procter & Gamble hauled their freight we would load it.

1512 The CHAIRMAN: You are familiar with the service performed for all the roads there by this terminal road, the Ivorydale & Millcreek Valley Road?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Now, is the service performed by it for any of the roads worth anything like the amount of this allowance, in your judgment?

Mr. McLEOD: In my judgment it is not.

The CHAIRMAN: But you have all been granting it?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Since 1896?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: On a contract terminable on ten days' notice?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Have you ever made a greater allowance than that fixed by the terms of that contract?

Mr. McLEOD: Do you mean as a terminal charge?

The CHAIRMAN: Have you ever made any greater allowance for the service they perform than that provided for by the contract?

Mr. McLEOD: Not for the service they perform.

The CHAIRMAN: What other allowance have you made?

Mr. McLEOD: At times we have met the situation in the
1513 general conditions for rates by making lower rates than our regular tariff.

The CHAIRMAN: Do you mean by that that you have secured business which would have been taken by other roads by accepting less than your tariff rates?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: That has been done do you mean in order to retain your share of Procter & Gamble's business?

Mr. McLEOD: Yes, sir.

Mr. MAXWELL: Was that solicited or offered?

Mr. McLEOD: I should say solicited. We never offered it as I understand it.

Mr. WARRINGTON: Are you talking about something you did yourself?

Mr. McLEOD: I am talking about what I did myself. I never offered any.

Mr. MAXWELL: What was done about it?

Mr. McLEOD: They solicited as far as I am personally concerned.

The CHAIRMAN: Has that been going on all the time since this contract was made—since it took effect, January 1, 1896?

1514 Mr. McLEOD: When the contract was first made, there was a tacit understanding between all of the roads and Mr. Macdonald I believe at that time, that they would pay tariff rates to a territory that is outlined in the agreement. I think the agreement specifies it.

Mr. COLSTON: It does, certainly.

Mr. McLEOD: And that was adhered to, I think, fairly and honestly for quite a time; I could not say how long, because I do not know; but in the year 1898 the condition of affairs in the whole country was in a pretty bad shape, and so far as our road is concerned in the year 1898 I believe we did make some concessions.

The CHAIRMAN: In what form were those concessions made? How was the transaction carried out?

Mr. McLEOD: By the freight being billed at the regular rate and then through some source the rate would be reduced.

The CHAIRMAN: Did other roads do the same thing?

Mr. McLEOD: I believe they did.

The CHAIRMAN: Are any allowances other than those provided by this contract made at the present time?

Mr. McLEOD: Not by us. I want to qualify my statement. On some Ohio business, State of Ohio business, on inbound tal-

1515 low, in a few instances from their purchasing points there we have allowed them the Sixth Class rate on tallow instead of the Fifth, but that is confined now to the State of Ohio. We aim to give them on their raw material, in that limited section, what they claimed would be necessary to bring it to Ivorydale.

The CHAIRMAN: How long was the payment to the I. & M. V. Ry. on other than State business greater than fixed by this contract continued?

Mr. McLEOD: We discontinued it on the first of January, 1899.

The CHAIRMAN: And have you made no allowances since?

Mr. McLEOD: No, sir.

The CHAIRMAN: Directly or indirectly?

Mr. McLEOD: Directly or indirectly.

The CHAIRMAN: Are there any further questions to be asked of Mr. McLeod?

Mr. MAXWELL: Yes, sir. You say you do not know of your own knowledge, do you, whether similar allowances were made by the other roads, or did Procter & Gamble make any statement to you on that subject as to whether other roads were making an allowance?

1516 Mr. McLEOD: They never said to us that other roads were making a specified allowance, but they put it in another way—that in order to get their business it would require some concessions.

Mr. COLSTON: And didn't require an diagram to tell you what that meant?

Mr. McLEOD: No, sir; it did not require a diagram to get it into our heads.

The CHAIRMAN: Are you able to state approximately how much those allowances made by your road to Procter & Gamble between January 1896 and January 1899 amounted to?

Mr. McLEOD: No, sir.

The CHAIRMAN: Or for any period?

Mr. McLEOD: No, sir.

The CHAIRMAN: Was it a large sum in the aggregate?

Mr. McLEOD: I should not say that it was a very large sum in the aggregate.

The CHAIRMAN: Give us some idea of how much it was.

Mr. McLEOD: Well, at times I should say 3 cents per hundred pounds, perhaps off of the through rate.

The CHAIRMAN: How much in dollars?

Mr. McLEOD: 3 cents off of the rate on 35,000 pounds
1517 would be $10.50, or on a thirty thousand pound car it would be $9.00.

The CHAIRMAN: How many cars did you average per month or per year, about how many? How much did you take from them?

Mr. McLEOD: I could not tell you that?

The CHAIRMAN: Then you do not know approximately how many thousands of dollars your company gave up to Procter & Gamble in the three years of 1896, 1897 and 1898 in the way of these secret allowances?

Mr. McLEOD: I do not. I would like to say this, that these allowances as made by our road had no reference to the terminal allowance.

The CHAIRMAN: I understand that. It was entirely independent of that.

Mr. McLEOD: Yes, sir; it was entirely independent of that.

The CHAIRMAN: If there are no further questions Mr. McLeod will be excused.

Mr. WARRINGTON: I wish to ask a question or two. Mr. McLeod, are there any railroads running near to the Procter & Gamble factories except those you have named—the C. H. & D., the Baltimore & Ohio Southwestern and the Big Four?

Mr. McLEOD: No, sir.

1518 Mr. WARRINGTON: All that you three companies have to do is to stand by your rates and nothing can be moved into or out of that factory?

Mr. McLEOD: You are right.

Mr. WARRINGTON: Now, in 1896 you do not claim that you did anything such as you have described?

Mr. McLEOD: No, sir. You mean over and above the terminal charges?

Mr. WARRINGTON: Yes, sir. As I understand you, you confined it to a certain time. During what period was that?

Mr. McLEOD: Well, I cannot give it to you precisely.

Mr. WARRINGTON: Can you by years? Was it in 1898?

Mr. McLEOD: I think in 1898 the condition was at its worst.

Mr. WARRINGTON: Was there anything in 1897?

Mr. McLEOD: I think in the latter part of 1897 there was.

Mr. WARRINGTON: You spoke of the rates of the country being in confusion, or something of that kind. What did you mean by that?

Mr. McLEOD: I mean that the traffic of the country had reached a pretty low ebb and competition became so keen in many places, and at many points, that the railroads thought they could in-
1519 crease their earnings on business by making secret allowances, and being secret they would thereby reap the benefit. Instead of being secret they gradually spread from point to point until practically the whole territory became involved, and it was impossible for any one road to stand up against the situation as it was and maintain rates, if they had they would have gone to the wall as far as business was concerned.

Mr. WARRINGTON: When you speak of competition you speak of competition between the railroads at that time, don't you?

Mr. McLEOD: Yes, sir; the competition between the railroads.

Mr. WARRINGTON: There have been some things said, facetiously and otherwise about the railroads being sought to do this thing—importuned to enter into this competition. I suppose you consider that the railroads were a high moral agency and that their desire for business had nothing to do with it. Is that your idea?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: I thought not. When you speak of cutting your rates, was this competition all on the soap business?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: Then the practice you have been describing is what you did generally? Is that right?

1520 Mr. McLEOD: It was done in regard to other articles?

Mr. WARRINGTON: It was not limited to soap, but reached out and took in other articles?

Mr. McLEOD: Yes, sir; it took in other articles.

Mr. WARRINGTON: And was that so of all these companies?

Mr. McLEOD: Yes, sir; I presume so.

Mr. WARRINGTON: Have you gentlemen given any notice to the Procter & Gamble Co. that you wish to terminate this agreement?

Mr. McLEOD: We have not.

Mr. WARRINGTON: Now, where you pay the P. C. C. & St. L. or somebody else—maybe the B. & O. S. W. $5.00 for one of the Globe Soap Company's car movements, how far does that car move?

Mr. McLEOD: I think about two miles; a mile and a half, or two miles.

Mr. WARRINGTON: Where does it begin and end?

Mr. McLEOD: Up near their East End Depot, between the public landing and their station, and our freight yard in the West End.

Mr. WARRINGTON: Do you know that the Globe Soap Company is at Walnut Street and the public landing?

Mr. McLEOD: I do not know exactly the location.

1521 Mr. WARRINGTON: You know that between it and the east terminus of the Connection track come Main, Sycamore, Broadway, Lawrence, Pike and Butler, do you not?

Mr. McLEOD: Going east do you mean?

Mr. WARRINGTON: Going east. And those streets are to be cut off from the whole length of the Connection Track when you are talking about the service done for you with respect to a Globe Soap Company's car. That is true, is it not?

Mr. McLEOD: Yes, sir. Can you enumerate them going the other way?

Mr. WARRINGTON: I will. Going west from Walnut you come to Vine, Race, Elm, Plum, Central Avenue, Johns, Smith—that is seven squares.

Mr. McLEOD: Eight squares.

The CHAIRMAN: Is there not some one here who can tell us exactly what that is?

Mr. WARRINGTON: I know these distances just as well as any man who comes here. I am putting data into his mind that will fix him as certainly as the sun is shining. I know those

1522 streets as well as any body.

Mr. McLEOD: After the Connection delivers it to the B. & O. S-W. will you kindly describe how it gets around to our yards? The car is delivered to the B. & O. S. W. at Smith Street. That Company carries that car way out to the junction with our comany at a station called Storrs Station, a good deal further west than our depot. It is then put on our side track, and we have to deliver that car in our yard so as to get it where we make up trains. That would be about a mile and a half.

Mr. WARRINGTON: And you pay $5.00 for that service?

Mr. McLEOD: Yes, sir; the Connection Track gets $3.50 and the B. & O. S-W. $1.50.

Mr. WARRINGTON: That is, $5.00?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: The reason the Globe Soap Co. does not get any of that is because they do not do the work.

Mr. McLEOD: Yes, sir That is the reason. The Connection Track and the B. & O. S-W. do the work. The Globe Soap Company load their own soap in every case.

Mr. WARRINGTON: When you come to talk about the Procter & Gamble yards, you know there would have to be the loco-

1523 motives of three different roads entering there every hour of every day, passing and re-passing in switching cars if they did the work.

Mr. McLEOD: I do not.

Mr. WARRINGTON: Is that not a fact?

Mr. McLEOD: I do not think so.

Mr. WARRINGTON: You said the original arrangement was made in 1891 at $400.00 a month. That was made between Mr. Brown and Mr. Waite, was it not?

Mr. McLEOD: I believe so.

Mr. WARRINGTON: You know that Mr. Brown left the freight department of Procter & Gamble in 1890, don't you?

Mr. McLEOD: I do not know about when Mr. Brown left the company.

Mr. WARRINGTON: I will ask you was it not made in 1886—the $400.00 arrangement.

Mr. McLEOD: No, sir. Did you say in 1886?

Mr. WARRINGTON: Yes, sir. In 1886.

Mr. McLEOD: I will say to the best of my knowledge that it was not in 1886.

Mr. WARRINGTON: How do you know it was made in 1891?

Mr. McLEOD: Because our first payment was made in 1891—the first payment of $400.00. (See correction by Mr. McLeod, page 1143.)

Mr. WARRINGTON: That is all.

1524 Mr. COLSTON: You seem to say in answer to the questions put to you by Mr. Warrington, that these three roads, the B. & O. S. W., the C. H. & D., and the Big Four were the only roads over which Procter & Gamble could ship. Is it not a fact that they could switch their cars into Cincinnati and there have all the roads at their command?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Over whose line?

Mr. McLEOD: The C. H. & D., the B. & O. S. W., and the Big Four are the only ones which make direct connection to Cincinnati.

Mr. COLSTON: They could ship to eastern points over other roads than those?

Mr. McLEOD: Yes, sir; they could reach that territory by other roads than the three named.

Mr. COLSTON: What other roads would they be by which they could reach that territory?

Mr. McLEOD: The Panhandle Road is one and the Cincinnati Northern after it went into operation.

Mr. COLSTON: Then they could get south also?

Mr. McLEOD: Yes, sir; they could get south also.

Mr. COLSTON: And they could use the Chesapeake & Ohio 1525 to get to the eastern country.

Mr. McLEOD: Yes, sir.

The CHAIRMAN: By paying a switching charge?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: In that case we would have to pay a switching charge from Ivorydale to the B. & O. S. W. and the Connection Track, if we chose your road to reach the Panhandle.

Mr. McLEOD: Yes.

Mr. WARRINGTON: Then we would have to pay the B. & O. S. W. to get to the Connection Track?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Then we would have to pay the Panhandle this charge over the Connection Track, would we not?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: And we would have to do that to reach any of these eastern points via the Panhandle if we chose yours as the initial company, going by way of Cincinnati?

Mr. McLEOD: That amount would have to be paid.

Mr. WARRINGTON: Who would pay it?

Mr. McLEOD: If you paid it to the Chesapeake & Ohio for instance, they would absorb it and pay it back to you out of their rates, the same as we would pay the B. & O. S. W. and the Con-
1526 nection Track on any business we would get from the Globe Soap Company.

Mr. WARRINGTON: But this would have to be taken care of by the carrier out of the rate?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: Do you know what the C. & O. does? What rate do they make from Ivorydale?

Mr. McLEOD: The C. & O. on competitive business apply the Cincinnati rates. They have given us such notice.

Mr. WARRINGTON: The B. &. O. S. W. and the Big Four would be the ones to fix their charges if we went over their roads.

Mr. McLEOD: Those charges are fixed by local agreement.

Mr. WARRINGTON: Who ever pays those switching charges, they are fixed along the lines that are indicated by the connection track charges, are they not, in amount?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: What are your switching charges?

Mr. McLEOD: Our switching charge to-day is $2.50 a car on cars switched into Cincinnati over our tracks.

Mr. WARRINGTON: From what place?

Mr. McLEOD: From Ivorydale to Cincinnati. If we were to deliver a car to the B. & O. S. W. for switching the car it would cost $2.50. The switching charge per carload is $3.00 per car,
1527 out of which we pay the I. & M. B. 50 cents, and we take the remaining $2.50.

Mr. WARRINGTON: This $2.50 that you charge would be added to the $5.00 we were speaking of a little while ago and those sums would have to be absorbed?

Mr. McLEOD: Not on the C. & O.?

Mr. WARRINGTON: Why not?

Mr. McLEOD: Because it would not go over the Connection Track?

Mr. WARRINGTON: Would it going East involve the B. & O. S. W. or the Connection Track?

Mr. McLEOD: No, sir.

Mr. WARRINGTON: Why not?

Mr. McLEOD: The only traffic that would apply on is traffic going over the Pennsylvania System, the Panhandle going East.

Mr. WARRINGTON: What was that sum you spoke of yesterday, that $2.00 which was allowed for cars put in your yard?

Mr. McLEOD: That was for freight that was placed on the team track. On a car of freight coming into our yard at Cincinnati and requiring the Pennsylvania railroad delivery, or Panhandle delivery, as it is familiarly known, if it was consigned on the bill of
1528 lading for Panhandle delivery, we make Panhandle delivery. We deliver to the B. & O. S. W. and they in turn to the Connecting Track and the Connection Track deliver it to the Panhandle. They place that car when delivered on their team track and for that service they charge us $5.00, and I said in illustration of the service they did that in the general computation of the value of the service rendered, $2.00 of that charge would accrue for the use of their yard and team track, which would leave $3.00 for the service of hauling the car from our yard over to their yard.

Mr. WARRINGTON: What is this team track? Is that just an ordinary track on which cars stand to be unloaded?

Mr. McLEOD: No, sir. I will illustrate: Our yard is one of the largest in Cincinnati; we can accommodate 100 cars on our team tracks. If a car comes in on the Big Four road, they may wish to place it in our yard, because of its being more convenient to haul from our tracks. By common usage that $2.00 charge has been thought reasonable over and above the switching charge for the use of our yard and team track.

The CHAIRMAN: You furnish the place of delivery?

Mr. McLEOD: Yes, sir.

Mr. WARRINGTON: You get $2.00 a car for that?

Mr. McLEOD: We would get $2.00 a car for anything we might put on our track for delivery.

1529 The CHAIRMAN: You might furnish a more convenient place for delivery than another road?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: And you furnish that for $2.00?

Mr. McLEOD: Yes, sir. And in that $5.00 is included the charge for that service.

The CHAIRMAN: So I believe you stated yesterday. We will take a recess until a quarter past two.

At 1:00 o'clock, P. M. a recess was taken.

1530 After Recess.

2 O'CLOCK, P. M.

A. H. McLEOD resumed the stand.

Mr. McLEOD: I can answer that question, your honor. That was all I testified to at that time on the subject of net weights.

Mr. COLSTON: Were you asked anything more than appears there—whether the practice of net weights existed——

Mr. WARRINGTON: I object to that. That shows what he was asked.

The CHAIRMAN: He testifies that that was all he testified to on that subject. If there are no further questions to be asked Mr. McLeod he will be excused.

The witness was excused.

1531 W. H. COVERDALE, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: What is your residence and business, Mr. Coverdale?

Mr. COVERDALE: My residence is Pittsburg; I am assistant engineer with the Pennsylvania Company.

Mr. MAXWELL: Over what roads and with respect to what matters does your jurisdiction extend?

Mr. COVERDALE: I am employed on the Northwest System, which is operated by the Pennsylvania Company, all the lines west of Pittsburg; the Pittsburg, Fort Wayne & Chicago; the Cleveland & Pittsburg Railroad; the Erie & Pittsburg Railroad; the Pittsburg, Youngstown & Ashtabula; the Toledo, Walhonding Valley & Ohio Railroad; the South Chicago & Southern—that is a very little one; and the Calumet River Railway; and the Newcastle and Beaver Valley Railroad; and there are one or two other organizations whose mileage is very slight.

Mr. MAXWELL: What is your business in connection with those railroads?

Mr. COVERDALE: I am in charge of the construction, the actual construction work under the chief engineer.

1532 Mr. MAXWELL: Do you have anything to do with the maintenance of track?

Mr. COVERDALE: No, sir.

Mr. MAXWELL: Only with construction?

Mr. COVERDALE: Yes, sir.

Mr. MAXWELL: We want to ascertain from you, Mr. Coverdale, the prices and expenditures in your department for the present year and for last year and to compare them with the prices and expenditures of former years.

Mr. WARRINGTON: How far back?

Mr. MAXWELL: Well, I have not said yet how far back, Mr. Warrington.

Mr. WARRINGTON: Well, I object to it.

Mr. MAXWELL: Will you tell us what the present price of labor is as compared with the prices in 1899 and in 1898?

Mr. WARRINGTON: We object. Now, you have been going over figures of this kind, but if the court please, what does it signify. A railroad company is not an instrument of a day or a week or a year, nor for the years 1898 and 1899. Unless they run their cycles of time, you never can get an average that is at all instructive or

1533 helpful or informing, and to say that we shall go on with this indefinitely of course means that it is important to the solution of whether or not a classification, a thing of a permanent character, shall be controlled or regulated in any way by two or three years of prices. Suppose we had come here at the greatest point of depression and had said that you shall come down now just to this time. Do you suppose the railroad companies would not have asked to stretch over a little more time. Yet they are here to-day. They found a summit of prices along about January 1st, let me assume for

the moment, and worked up to that and now it is going down. Now, they ask your honors to sit here and hear prices for these two years.

The CHAIRMAN: What you say goes to the weight or value of the evidence. As far as it bears on the questions involved, it seems to me it is competent. We will take the testimony.

Mr. MAXWELL: I will ask to have the question repeated.

The question was repeated by the stenographer as follows:

"Mr. MAXWELL: Will you tell us what the present price of labor is as compared with the prices in 1899 and in 1898?"

1534 Mr. COVERDALE: The market price of labor to-day for our work is about $1.50. In 1898 the price was as low as $1.15 from that to $1.25; the latter part of 1898 it came up to $1.35 on our work. In 1899 it varied from $1.25 which was the lowest, to $1.50.

Mr. MAXWELL: When in 1899 did it get up to $1.50.

Mr. COVERDALE: The first part of the year we were doing the work on which the labor was $1.50. I put in the two prices because there were one or two instances where the labor was a little lower in different parts of the country.

Mr. MAXWELL: Has there been any fluctuation this year? If so, what?

Mr. COVERDALE: The price was $1.50 all this year and I should say the demand for labor at that price has been stronger than at any other price this year.

Mr. MAXWELL: Give us your comparative figures with respect to track, bridges and docks.

Mr. COVERDALE: The books in the office of the chief engineer of the Pennsylvania Company show that we expected for tracks——

Mr. WARRINGTON: Is that what you are testifying from? How do you know that?

1535 Mr. COVERDALE: I took the figures from there. I make out the vouchers on which the figures are based largely.

Mr. WARRINGTON: When did you take them from there?

Mr. COVERDALE: The day before yesterday.

Mr. MAXWELL: What records are kept in your office?

Mr. COVERDALE: The regular bookkeeping books—ledger, journal, &c.

Mr. MAXWELL: The figures you are giving are figures you took from those records?

Mr. COVERDALE: Yes, sir.

Mr. MAXWELL: What do you have to do with keeping the records?

Mr. COVERDALE: I write the vouchers on which the money is paid; not all the money, but a great deal is under my supervision. There have been particular items that I have not been in contact with.

Mr. MAXWELL: Give us your figures.

Mr. COVERDALE: During 1898 we expended for tracks, bridges, docks, and so on $1,498,410. During 1890, $2,043,328. Up to June 1st, 1900, $938,620.

Mr. MAXWELL: How did the prices, aside from the labor, to which I understand you have already testified, in the construction

1536 of tracks, bridges and docks compare?

Mr. COVERDALE: The prices of all material have increased during that time.

Mr. MAXWELL: To what extent or in what ratio?

Mr. COVERDALE: The prices for grading—we do a great deal of grading work—the price for grading is largely governed by the price of labor. Under those circumstances the price of grading has increased 30 per cent., which represent the increase in the cost of labor.

Mr. MAXWELL: Now, when did that increase take place?

Mr. COVERDALE: Well, it reached the maximum the latter part of 1898 or the first of 1899, just about.

Mr. MAXWELL: Now, what, if any, change has there been since the period you say it reached the maximum?

Mr. COVERDALE: It is still at the maximum.

Mr. MAXWELL: Now, about the prices of material that you put into the tracks, bridges and docks, aside from labor. Can you give us any more definite statement of the percentage of increase.

Mr. COVERDALE: Yes, sir.

Mr. MAXWELL: Or figures as to particular items—I suppose rails entered into that.

Mr. COVERDALE: Well, the purchase of rails for the North-
1537 west System of the Pennsylvania lines—the contracts do not pass through the chief engineer's office, so, perhaps, you do not want me to testify in regard to that particular item. Neither do contracts for ties. Our work is grading, masonry and bridges. Those are the three principal items.

Mr. COLSTON: You do not deal with construction?

Mr. COVERDALE: I do not deal with maintenance. I deal with the construction department.

Mr. MAXWELL: What, if anything, do you have to do or have occasion to know about the cost of the rails and ties that are put into the construction.

Mr. COVERDALE: We estimate our cost for projected work at so much a mile. We have tables made out to save us the trouble of saying, supplies—bars or bolts, so much in a mile of track; so much for rails and so many ties at so much a tie. We have tables compiled that give us in a general way the cost of laying a mile of track. I know our estimate has increased during that time in basing our figures in that way.

Mr. MAXWELL: To what extent.

Mr. WARRINGTON: Is that important, your honors?

The CHAIRMAN: I will not say how important it may be.
1538 but it seems to be competent.

Mr. COVERDALE: In 1897——

The CHAIRMAN: Now, if I understand you are talking about estimates.

Mr. COVERDALE: Yes, sir; I am talking about estimates based on actual market prices of materials, but grouped together to save myself and other men a lot of detail labor.

Mr. MAXWELL: That is, you consolidate all the items into one.

Mr. COVERDALE: Yes, sir. Our estimates in 1897 for a mile of track were as low as $7,500 a mile.

The CHAIRMAN: What does that include?

Mr. COVERDALE: Ballast, steel rails, ties, supplies, bars, bolts and nut locks, and labor laying track.

The CHAIRMAN: It has nothing to do with grading?

Mr. COVERDALE: No, sir; track superstructure; everything above the grade of the railroad.

Com'r YEOMANS: What is the ballast?

Mr. COVERDALE: It is rock.

Mr. MAXWELL: Give us the price for 1898, 1899 and at present.

Mr. COVERDALE: In 1898 the price began to go up from
1539 $7,500. It went to $8,000 a mile, $8,500 a mile and $9,000 a mile, and we have used $2 a lineal foot, which is over $10,000 a mile. I do not remember the exact month we used those figures. I do not remember the particular work. I do remember that I personally used those figures after we prepared the cost entering into the construction of a mile of track.

Mr. MATTHEWS: Is that all for the year 1898?

Mr. COVERDALE: No, sir.

Mr. MATTHEWS: You did not mention any other year.

Mr. MAXWELL: Can you tell us during what years this was? You have given $7,500 for 1897 and you say it then went to $8,000 and $8,500 and $9,000 and $10,000. What year was that?

Mr. COVERDALE: To the best of my recollection I should say that at the first of 1899 we were counting $9,000 to $9,500 per mile of track.

Mr. MAXWELL: How about bridges? Can you give us figures on that. In the first place how do you get your br*di*ges. Do you build them or buy them?

Mr. COVERDALE: We buy them. Sometimes we buy them F. O. B. the cars at the bridge site and at other times we buy them erected
in place. When we bu*t* them erected in place that includes
1540 free transpor*a*tion for bridge and materials and men to the bridge site.

Mr. MAXWELL: Can you give any comparative figures on br*di*ges?

Mr. COVERDALE: In 1898 we expended $118,500 for bridges and in 1899, $401,000. Our estimate for this year's work is $300,000. That programme, of course, is not completed at this date. The figures I have given for 1898 and 1899 are actual expenditures. The work of course is not completed for this year.

Mr. MAXWELL: Now, can you give us any comparison of prices.

Mr. COVERDALE: Yes, sir; I have a list of eight different bridges, picked out at random at different bridge sites from November, 1897, until May, 1899, showing the cost per pound and per ton. Do you want that detailed list?

Mr. MAXWELL: Well, I want a comparison that will show whether it was an increase or decrease and what percentage, or in any other way you can express it.

Mr. COVERDALE: Bridge 172 on the Grand Rapids & Indiana Railway. That is a railway I did not mention in that list. The engineering department has control of that road although, as
1541 I understand it, it is not directly operated by the Pennsylvania Company—Bridge 172, Grand Rapids & Indiana Railway, contracted for November, 1897; the price was 2.82 cents per

pound, or $56.40 per ton. Bridge No. 214, Grand Rapids & Indiana road, contracted for November, 1897. The price was 2.84 cents per pound of $56.80 per ton. Bridge No. 56, Cleveland & Pittsburg Railroad Company, contracted for in May 1898, 2.3 cents per pound or $46 per ton. Bridge No. 60, Erie & Pittsburg Railroad, 2½ cents per pound, or $50 per ton.

Mr. MATTHEWS: What date is that.

Mr. COVERDALE: May, 1898. Bridge 606, Grand Rapids & Indiana Railway, contracted for July, 1898; 2.68 cents per pound or $53.60 per ton. Bridge No. 40, Erie & Pittsburg Railroad, contracted for March, 1899; 3.34 cents per pound, or $68 a ton. Bridge No. 47, Erie & Pittsburg Railroad, contracted for March, 1899; 3½ cents a pound or $70 a ton. The last one, No. 140, on the Eastern Division of the Pittsburg, Fort Wayne & Chicago Railway, contracted for in May, 1899, 4.15 cents per pound or $83 a ton. That completes the list.

Mr. MAXWELL: Now, can you give us the percentage of increase indicated by these illustrations you have taken in 1900 over
1542 1898?

Mr. COVERDALE: There is an increase of 40 per cent. in 1899 over the price in 1897.

Mr. MAXWELL: Is there anything in the condition or circumstances of the bridges to cause any change, and if so, what, in the price?

Mr. COVERDALE: None whatever, sir. That 40 per cent. is a very conservative estimate. It is really a great deal more than 40 per cent. in some cases.

Mr. MAXWELL: Well, what would you say was a fair and conservative average?

Mr. COVERDALE: Well, I would say from 40 to 50 per cent., a very fair and conservative average.

Mr. MAXWELL: Well, what was the cost of the work erected in these different years, the comparative cost per ton.

Mr. COVERDALE: Bridge work?

Mr. MAXWELL: Yes, sir.

Mr. COVERDALE: The cost of work erected——

Mr. MAXWELL: Is that covered by the statement?

Mr. COVERDALE: It is all covered by the statement. It varies from $46, the lowest, to $83, the highest.

Com'r YEOMANS: Is that erected.

1543 Mr. COVERDALE: Yes, sir.

Mr. COLSTON: Ready for use?

Mr. COVERDALE: Yes, sir; without the track superstructure; that is, the steel rails.

Mr. MAXWELL: You do not know what the percentage of increase, if any, was in the track superstructure?

Mr. COVERDALE: No. I have already stated that we made estimates that show a very general increase.

Mr. MAXWELL: Now, has your company been required by ordinance or law or otherwise to expend any money on track elevation?

Mr. WARRINGTON: Is that the end of your question.

Mr. MAXWELL: That is the end of that question.

Mr. WARRINGTON: Well, we object to that question.

The CHAIRMAN: We are a little doubtful about going into that, Mr. Maxwell.

Mr. MAXWELL: Your honor, we have got to get money some place. The city of Chicago has passed an ordinance that we have got to comply with or get out of business. It is as much of an expense as the expense of engines or crews or the increase in the price of rails. We have got to get the money somewhere to do it. These gentlemen challenge our effort to get a little more revenue and that
1544 wherever you raise the rates, it is a presumption that you raise them unlawfully. We are cited before your honors. We have got to present the conditions with which we are confronted. We have got to spend a great deal of money in various places for this track elevation and we have got to get the money some place and do not know how to get it except by increasing rates.

The CHAIRMAN: Mr. Warrington, we are inclined to think that this is competent. We do not think it is of very great value unless it is shown that such expenditures are pretty general. That is, a mere isolated case could not be taken into account for determining what rates should be charged.

Mr. MAXWELL: Of course not. It is not isolated. It applies to all railroads. It applies to three or four cities. Chicago has already passed an ordinance. I do not know what the situation is in the District of Columbia. They are confronted with the same thing in Pittsburg, and there are louding rumblings in Cincinnati.

The CHAIRMAN: The very fact that railroads are required to incur expenses which are exceptional and peculiar as distinguished from those which are regular and current is a competent fact, it seems to me. We will take the testimony.

1545 Mr. WARRINGTON: You will let me have the exception recorded?

The CHAIRMAN: Certainly.

Mr. MAXWELL: I will ask to have the question repeated.

The question was repeated by the stenographer as follows:

"Mr. MAXWELL: Now, has your company been required by ordinance or law or otherwise to expend any money on track elevation?"

Mr. COVERDALE: Yes, sir.

Mr. MAXWELL: Where?

Mr. COVERDALE: In Chicago.

Mr. MAXWELL: To what amount?

Mr. WARRINGTON: It is understood that my objection goes to each one of these questions?

The CHAIRMAN: To all this testimony.

Mr. COVERDALE: $983,000 in 1898 and 1899. I think the 1899 work was not finished at the end of that year. Perhaps a little of it was paid this year. The bulk of it was done in 1898. The work was started in 1897.

Mr. MAXWELL: Now, are you under obligation to expend further money on track elevation at Chicago? If so, what amount?

1546 Mr. COVERDALE: Yes, sir; the councils of Chicago have passed ordinances requiring the Pittsburg, Fort Wayne & Chicago Railway to elevate their tracks from Garfield Boulevard

northward to the South Branch bridge. The estimated cost of doing this work is $2,700,000.

Mr. MAXWELL: When does that have to be done?

Mr. COVERDALE: It must be done within a limited term of years. I do not remember the specific term of years. I think it is five.

Mr. MAXWELL: Now, are there ordinance- or regulations of law on that subject in any other cities?

Mr. COVERDALE: Oh, yes sir.

Mr. WARRINGTON: One moment. It does seem to me that the method of proof ought to be a little more certain.

The CHAIRMAN: Mr. Maxwell, if you will pardon me, I think you ought not to go very far into that sort of thing. We might almost take judicial notice of the fact that railways from time to time are required to make these extraordinary expenditures, and details of that kind, it seems to us, are hardly helpful. The general fact that such expenditures are required, as illustrated by what witness has already said, strikes us as being all that has any actual bearing on the questions here.

1547 Mr. MAXWELL: Can you tell us about how much—you have given the figures for Chicago—at some other principal city?

Mr. COVERDALE: We expect to spend in Pittsburg and Allegheny $2,000,000 almost immediately for the same class of work.

The CHAIRMAN: There is another trouble about testimony of this kind that now occurs to me. Many of those extraordinary expenditures result in such economies of operation as to more than pay the interest on the cost and so become a profitable investment.

Mr. COLSTON: They may or may not.

The CHAIRMAN: They may or may not. As I suggested, when we have the general fact that such unusual and extraordinary expenditures are liable to be required and are in fact required, as illustrated by one or more instances, it seems to me that we have all that is helpful to the questions in this case.

Mr. MAXWELL: I believe that is all.

Mr. COLSTON: I would like to ask you in regard to the example of your expense for grading, what territory is that applicable to, or is it all over?

Mr. COVERDALE: It is all over the territory covered by the Northwest lines of the Pennsylvania system—Pittsburg to Chicago,

1548 to Erie, to Ashtabula, to Cleveland and all points in between.

Mr. COLSTON: Please name those States.

Mr. COVERDALE: Western Pennsylvania, Northern Ohio, Northern Indiana, and a small portion of the Northeastern part of Illinois.

Mr. COLSTON: That ratio of increase, then, would be a fair ratio of increase for railroad laying in all that territory?

Mr. COVERDALE: That has been our experience.

Mr. COLSTON: As to the bridges, these prices were not confined to bridges in any particular locality?

Mr. COVERDALE: No, sir.

Mr. COLSTON: It would be a fair criterion for any railroad bridges of like kind?

Mr. COVERDALE: I suppose so; yes, sir.

Mr. COLSTON: These bridges, of course, were iron bridges, were they not?

Mr. COVERDALE: They were steel bridges; some iron, of course.

Mr. COLSTON: They went up generally with the rise in iron and steel. That, I suppose, was the principal cause of their going
1549 up?

Mr. COVERDALE: Certainly.

Mr. COLSTON: I think that is all I want to ask him.

Cross-examination.

Mr. WARRINGTON: How long have you been a civil engineer?

Mr. COVERDALE: Eight years and a half.

Mr. WARRINGTON: Have you been abroad?

Mr. COVERDALE: No, sir.

Mr. WARRINGTON: Do you keep up with the foreign railroad literature?

Mr. COVERDALE: No, sir.

Mr. WARRINGTON: Is that kind of literature forbidden the department of the Pennsylvania railroad system to which you belong?

Mr. COVERDALE: It is not.

Mr. WARRINGTON: Do you know, as a matter of fact, that all the railroads of England elevate their tracks at ordinary street or road crossings for purposes of economy?

Mr. COVERDALE: I do not.

Mr. WARRINGTON: That would not come within the range of your knowledge?

Mr. COVERDALE: It would, sir.

1550 Mr. WARRINGTON: Well, is it a fact that you can keep up better speed with less liability to accident if you have your road elevated in such cases and so minimize that kind of expenses, that is, damages?

Mr. COVERDALE: Every grade crossing eliminated reduces the liability to accident.

Mr. WARRINGTON: And in that respect is a matter of economy.

Mr. COVERDALE: It is.

Mr. WARRINGTON: When was the elevated portion of the Pennsylvania Railroad constructed which leads up to the depot by the City Hall,—I do not know the streets—Broad street, maybe?

Mr. COVERDALE: I can not tell you.

Mr. WARRINGTON: Is it farther back than your connection with the road?

Mr. COVERDALE: Part of it at least, I think.

Mr. WARRINGTON: Do you not know that ten or twelve years ago you went into Philadelphia that way?

Mr. COVERDALE: I have said that I think it was done prior to that time?

Mr. WARRINGTON: Well, that was an expenditure that seems to have taken place either prior to or about the beginning of the
1551 official classification, was it not?

Mr. COVERDALE: I do not know anything about the beginning of the official classification.

Mr. WARRINGTON: Well, can you be any more definite as to when your roads were elevated to go into Broad street?

Mr. COVERDALE: No, sir; I had no connection with any work east of Pittsburg whatever.

Mr. WARRINGTON: Now, take Allegheny and Pittsburg, or reverse the order of those names, you are building quite a depot there, are you not?

Mr. COVERDALE: The Pennsylvania Railroad is about to construct a new depot there.

Mr. WARRINGTON: On its own property?

Mr. COVERDALE: I can not tell you.

Mr. WARRINGTON: Well, on property that it will possess? It is not public street or park or anything of that kind, is it?

Mr. COVERDALE: I do not know where the street line will come in reference to that depot.

Mr. WARRINGTON: You know this, do you not, that it is on property in the possession and control of your company; that is, where the site of this depot is to be?

1552 Mr. COVERDALE: I really do not know whether the proposed depot will be on the present site or will not. There are certain agreements with the city relative to the abandonment of streets and opening of new ones with which I am not at all familiar.

Mr. WARRINGTON: That is all a matter of agreement between the company and the municipalities, is it?

Mr. COVERDALE: I do not know.

Mr. WARRINGTON: Well, you contemplate having your depot at such elevation as to run into it on elevated tracks, do you not?

Mr. COVERDALE: In so far as the Pennsylvania Company with which I am connected is concerned, I think that is true.

Mr. WARRINGTON: Now, that is a voluntary matter on the part of the company?

Mr. COVERDALE: The elevation of track?

Mr. WARRINGTON: Yes, sir; the construction of your depot so as to reach it on an elevated track is a voluntary matter?

Mr. COVERDALE: I think it is not.

Mr. WARRINGTON: Now, why? If you know of any ordinance requiring that, give us a reference to it.

1553 Mr. COVERDALE: I do not know of any specific ordinance.

Mr. WARRINGTON: Why do you say it is not voluntary?

Mr. COVERDALE: Because I think all such work is done under pressure, I might say, from outside sources.

Mr. WARRINGTON: Your theory, then, is that the railroad company never makes any progress except under pressure; it that it?

Mr. COVERDALE: No, sir.

Mr. WARRINGTON: Did you ever know of its doing anything that was not under the whip and spur? If you did, tell us where that happened?

Mr. COVERDALE: You mean in the way of improvement?

Mr. WARRINGTON: Yes, sir.

Mr. COVERDALE: Yes, sir; I have known of such cases.

Mr. WARRINGTON: Well, was not this one of the cases?

Mr. COVERDALE: I do not know.

Mr. WARRINGTON: Then, you do not know anything about it. Let me ask you, why was it you stopped with your bridge prices on the 1st of January of this year, and I will ask you in that connection if you do not know that the prices have been going steadily

1554 downward since the 1st of January?

Mr. COVERDALE: I had no motive whatever in stopping. I was asked by our chief engineer to prepare a list covering a certain letter which was shown to me, which I did. I had no idea that it was for any special use or that it would have been of any benefit to get a dozen more bridges on the list or seven less—none whatever.

Mr. WARRINGTON: Now, will you answer the other part of the question, to wit, that the prices have been going downward since January 1st last?

Mr. COVERDALE: I have seen newspaper reports of it. I do not know of any instances of it in the way I have given you instances of the other prices.

The CHAIRMAN: Do you mean by that that you have made no contracts or estimates based on lower prices than the ones given by you since the date of the highest one?

Mr. COVERDALE: I have not seen any contract at a lower price nor have I made any estimate at a lower price.

Mr. WARRINGTON: Have you made any contracts since the first of January?

Mr. COVERDALE: I am not able to answer that question. I do not know.

The CHAIRMAN: Your last date, if I recollect it, was May,

1555 1899.

Mr. COVERDALE: Yes, sir; I think May, 1899, was the last one.

The CHAIRMAN: That is when prices were highest.

Mr. COVERDALE: I think they had reached the maximum there.

The CHAIRMAN: Then, you do not know of any lower prices since that.

Mr. COVERDALE: No, sir; not of any contract with us. I do not say there are none.

The CHAIRMAN: Do you express the opinion here, based on your knowledge information and experience that work of that kind can not be done any cheaper than at those figures you paid in 1899?

Mr. COVERDALE: No, sir; I think it can be done a little cheaper now.

The CHAIRMAN: How much cheaper?

Mr. COVERDALE: I can not tell you that, sir. I have not gone into the matter in any way.

The CHAIRMAN: That is all.

Mr. MAXWELL: Has there been any reduction in the price of labor?

Mr. COVERDALE: No, sir; none whatever.

1556 Mr. MAXWELL: Has there been any reduction in any of the materials that go into your work that you know of? If so, what has it been?

Mr. COVERDALE: There has been no reduction in grading or masonry. There may have been a slight reduction in the price of steel. There has been no reduction in the price of timber.

Mr. MAXWELL: That is all.

There being no further questions, the witness was excused.

1557 W. C. CUSHING, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: What is your business and residence?

Mr. CUSHING: Engineer on maintenance of way of the Pittsburg Division of the Pennsylvania lines of the Southwest system.

Mr. MAXWELL: Between what points does the railroad of which you have charge extend?

Mr. CUSHING: Between Pittsburg and Newark, near Columbus; the Pittsburg, Wheeling & Kentucky Railroad; the Chartiers Railway; the Chartiers Connecting Railway; the New Cumberland branch; the Bridgeville & McDonald branch.

Mr. MAXWELL: What work on the railroad comes under your supervision?

Mr. CUSHING: The maintenance of way department.

Mr. MAXWELL: We want to know whether there has been any change in the cost of your department of the railway in the last two or three years and if so what the change has been. You can tell us in your own way.

Mr. WARRINGTON: I would like to have it understood your honors, that an exception goes to that. It was ruled on and I do not
1558 want to say any more.

The CHAIRMAN: Very well.

Mr. CUSHING: There has been a very marked increase in the prices paid on labor for the ordinary maintenance work and the prices of all classes of material have risen in the last two years in connection with our work.

Mr. MAXWELL: What has been the advance in the price of labor, and when did that take place?

Mr. CUSHING: The increase was actually made on April 1st, 1900. The necessity for it arose in the spring of 1899. In May, 1899, we had a large number of men leave work for higher wages and we were for some time very much crippled in our department on that account. It was the first what might be called "strike" among the maintenance of way employees that I have known since I have been connected with the railroad.

Mr. MAXWELL: Well, what character of labor or mechanics.

Mr. WARRINGTON: What do you call those men who were in this strike?

Mr. CUSHING: Track men. The increase of wages was made to cover track men and nearly all classes of mechanics as well; that is, carpenters, painters and masons.

1559 Mr. MAXWELL: I do not want to go into unnecessary details, but will you give us a little more definite statement of the amount of that increase?

Mr. CUSHING: The increase annually on the division with which I am connected amounts to $40,000 a year.

The CHAIRMAN: That might be accounted for on the number employed.

Mr. CUSHING: No, that is not based on an increased number of men but on the running number as it consisted at the time.

Mr. MAXWELL: How many men does that cover.

Mr. CUSHING: About fifteen hundred.

Mr. MAXWELL: They cost you $40,000 more now than the same men would when?

Mr. CUSHING: Than the same men would just a year ago.

Mr. MAXWELL: What change, if any, has there been in the price of material that you use in your department?

Mr. CUSHING: The price of cross ties has risen from 47 cents to 57 cents apiece.

Mr. MAXWELL: When did that rise take place?

Mr. CUSHING: That rise took place at the first of the year. The contract was actually made in September, 1899. The price of oak lumber has risen $2 per thousand.

1560 Mr. MAXWELL: Within what time?

Mr. CUSHING: Since the arrangement was made—about the fall of 1899?

Mr. MAXWELL: What percentage of increase is that?

Mr. CUSHING: That is from $14 to $16 a thousand. The price of pine lumber has gone from $16 and $23, according to grade, to $23 and $35, according to grade. The price of stone ballast has gone up about 3 cents a ton.

Mr. MAXWELL: From what price?

Mr. CUSHING: From 42 to 45 cents a ton. The price of frogs and switches rose from $18 and $30 to between $40 and $50.

Mr. MAXWELL: When was that rise?

Mr. CUSHING: That rise began last fall. The reason I give these variations is because the price depends on the number of the frog and switch and the weight of the rail.

Mr. WARRINGTON: What are those figures?

Mr. CUSHING: Dollars. Wharton switches rose from $75 to $100 apiece. Signal material has increased about two-thirds. It embraces such a variety of small details that I can not give the prices on the details, but as a general thing it is about two-thirds increase.

1561 Mr. MAXWELL: Taking in everything, the increase that has occurred in material and in wages, can you tell us what the percentage of increase in the cost of your department is?

Mr. CUSHING: No, I could not tell you that. It all depends on the amount of work we are doing.

Mr. MAXWELL: I do not mean the increase in dollars and cents but the percentage of increase.

The CHAIRMAN: Assuming there was the same amount of work.

Mr. CUSHING: The percentage on material is about two-thirds. Some of it is higher and some of it is lower, but 66⅔ per cent. is perhaps a medium of the whole increase. I think iron and steel increased as much as 80 per cent.

Mr. MAXWELL: You have already given the figures from which we can estimate the percentage of increase in labor.

Mr. CUSHING: Yes, sir.

Mr. MAXWELL: That is all.

1562 Cross-examination:

Mr. WARRINGTON: Iron and steel you said was how much?

Mr. CUSHING: I was giving you my general idea—not from any definite figures—that the increase has been generally about 80 per cent.

Mr. WARRINGTON: How much has that come back the other way?

Mr. CUSHING: I do not know. I really have not watched the market on that. I do not handle that part of the work.

Mr. WARRINGTON: Are these switches made of steel?

Mr. CUSHING: Yes, sir. They have not come back in price at all as yet.

Mr. WARRINGTON: Would the price of the material of which they were made have any effect on them after a while?

Mr. CUSHING: It ought to ultimately.

Mr. WARRINGTON: If the rice, thousands of miles away over in the Philippines would affect the prices here I suppose steel would affect the price of frogs, would it not?

Mr. CUSHING: Yes, sir; certainly, unless the price of labor keeps up so high as to offset it. That is a very large element in the manufacture of a frog.

1563 Mr. WARRINGTON: When did this strike take place?

Mr. CUSHING. In May, 1899.

Mr. WARRINGTON: You said something about it never having happened at least for some time. I did not quite understand what you meant to state about that?

Mr. CUSHING: Why, I simply meant that the labor market had never gotten quite so bad before as to cause the track men to leave work. We have been continually the past four years getting a lower class of labor in our work, indicating that the labor market is getting higher all the time.

Mr. WARRINGTON: Then, this was an unusual thing, was it not, for this strike to occur?

Mr. CUSHING: Unusual for a good many years.

Mr. WARRINGTON: Can you remember how many years ago any similar thing to that happened?

Mr. CUSHING: Not within my knowledge at all?

Mr. WARRINGTON: How many years do you go back?

Mr. CUSHING: To 1887.

Mr. WARRINGTON: Have you been in this department since 1887?

Mr. CUSHING: Yes, sir.

Mr. WARRINGTON: Then you know just as much about

1564 1887, 1888 and 1889 of all these subjects as you do for the years you were asked about?

Mr. CUSHING: Well, in a general way; my particular remembrance so far back would not be as minute as it is now.

Mr. WARRINGTON: You have the data to enable you to cover all

these subjects for a period extending back to 1887 if you wish to resort to it. Is that right?

Mr. CUSHING: Yes, sir; I believe it would be.

Mr. WARRINGTON: Where are your data?

Mr. CUSHING: In what I might call our voucher books. We pass the bills in our office for these matters.

Mr. WARRINGTON: Is that in Pittsburg?

Mr. CUSHING: Understand, I was not on one division all that time. I have been transferred from one division to another.

Mr. WARRINGTON: Where would these books be found out of which you would get all this information if you wanted to?

Mr. CUSHING: They would be in the office of the engineer of maintenance of way.

Mr. WARRINGTON: Where is that?

Mr. CUSHING: My particular office is at Pittsburg.

1565 Mr. WARRINGTON: Are your books at that office?

Mr. CUSHING: They are all there filed away. The older books, on account of accumulation, are stored. They are not kept handy so as to refer readily to them.

Mr. WARRINGTON: Now, what you have done in the present instance has not been to make any tabulated statements, has it?

Mr. CUSHING: No, sir.

Mr. WARRINGTON: And you have had no one to do that for you?

Mr. CUSHING: No, sir.

Mr. WARRINGTON: You are here testifying to your recollection, in a general way; is that right?

Mr. CUSHING: Yes, sir.

Mr. WARRINGTON: And that is the reason why you give yourself such a range in prices?

Mr. CUSHING: No, sir; I give it to you exactly in the cases where it could be given. The reason I gave such wide ranges—take lumber, for instance—is on account of the quality. Lumber is graded in price according to the quality. The same with frogs and switches. A frog which contains less rail and less workmanship than one of more rail and more workmanship costs less. That is the

1566 reason I gave that wide range.

Mr. WARRINGTON: How many qualities of lumber are there between the extremes you gave?

Mr. CUSHING: I think our specifications grade about thirty different kinds.

Mr. WARRINGTON: With as many different prices?

Mr. CUSHING: Well, they will not vary, some of them, but a few cents or a few dollars.

Mr. WARRINGTON: Do the prices vary according to the quality?

Mr. CUSHING: Yes, sir; they do.

Mr. WARRINGTON: Is that so as to both kinds of lumber—oak and pine?

Mr. CUSHING: No, not with my division. I have a contract on the division with which I am connected, under which I buy my oak lumber all under one specification. I do not admit of inferior quality at all. It is all first class quality.

Mr. WARRINGTON: Is there any difference in quality of ties?

Mr. CUSHING: Yes, sir; there are two qualities of tie; first an second class.

Mr. WARRINGTON: Do they differ in price?

1567 Mr. CUSHING: Yes, sir; a first class tie is worth 57 cent whereas a second class tie is worth about 12 cents less.

Mr. WARRINGTON: Are there differences between frogs?

Mr. CUSHING: Not in quality; only in weight, or, as we call then by number and weight of rail.

Mr. WARRINGTON: Do prices differ according to numbers.

Mr. CUSHING: Yes, sir.

Mr. WARRINGTON: The reasons then you gave yourself for th first term—18 to 30 and then the rise from 40 to 50 was on accoun of the intervening numbers?

Mr. CUSHING: Yes, sir; that was the reason.

Mr. WARRINGTON: Are there any different numbers in switches.

Mr. CUSHING: No, not in numbers, but in lengths and weight rail.

Mr. WARRINGTON: Does that make a difference in price?

Mr. CUSHING: Yes, sir.

Mr. WARRINGTON: I suppose there is a great variety of signa material?

Mr. CUSHING: Yes, sir; a very great variety.

1568 Mr. WARRINGTON: Do you carry in your head the quan tities of these various materials which we have gone over no in the last two or three minutes?

Mr. CUSHING: The quantities used?

Mr. WARRINGTON: Yes, sir; in the last year.

Mr. CUSHING: Some of them I do.

Mr. WARRINGTON: Do you remember all of them?

Mr. CUSHING: No, I could not do that very well.

Mr. WARRINGTON: I suppose where there are differing prices an varying quantities it would be somewhat important to an average t get a common denominator somewhere, would it not?

Mr. CUSHING: In making our estimates, we always have the price at hand.

Mr. WARRINGTON: I do not wish to ask any more questions.

The CHAIRMAN: You have to do with the maintenance of way?

Mr. CUSHING: Yes, sir.

The CHAIRMAN: Suppose a new bridge is put in some place o your line. What is that expense charged to?

Mr. CUSHING: That is outside my department.

The CHAIRMAN: You have to do then with the ordinar

1569 or incidental repairs designed to maintain the roadway.

Mr. CUSHING: Yes, sir.

The CHAIRMAN: Do you reduce those expenses to a mileage basis

Mr. CUSHING: No; not in my office we do not.

The CHAIRMAN: So you do not know what your expenses fo maintenance of way per mile have been during any year withi the last ten years?

Mr. CUSHING: No, sir; I do not.

The CHAIRMAN: Have you kept the accounts in a way that show a comparison of one year with another?

Mr. CUSHING: Yes, sir; we keep our expenses per year. My office, however, is only a portion of the expense against maintenance of way and my knowledge is confined to the expenses which originate in my office.

The CHAIRMAN: Are you able to say from your knowledge and experience how the expense of maintaining way now, compares with the expense of maintaining way in 1890 or 1891?

Mr. CUSHING: Well, I think it is much larger now. There is reason for it.

The CHAIRMAN: Has there been any time between then and now when the expense was less?

1570 Mr. CUSHING: Yes, sir; in the period between 1894 and 1896 there was a very servere depression in business, and the maintenance of way department is one of the first that feels it.

The CHAIRMAN: So that the same amount of work done would cost less by reason of the cheaper labor and cheaper material?

Mr. CUSHING: No, sir; simply a less amount of work done. That is all.

The CHAIRMAN: How did the prices of materials, generally speaking, used in maintenance of way in 1891 compare with the prices of those materials at the present time?

Mr. CUSHING: Well, I do not remember. I did not look it up and do not remember.

The CHAIRMAN: Are you able to say it was greater or less?

Mr. CUSHING: I think it is less.

The CHAIRMAN: Has it been less at any intervening time than it was in 1890 or 1891?

Mr. CUSHING: Not to my personal recollection at the present time. The prices of material did not vary. We make our reductions by the smaller amount of work we do.

The CHAIRMAN: That is all. If there are no further questions, the witness will be excused.

The witness was excused.

1571 JOHN B. BRITTAIN, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: What is your business, Mr. Brittain?

Mr. BRITTAIN: I am special agent of the accounting department of the Pennsylvania lines west of Pittsburg—the Pennsylvania Company and the P. C. C. & St. L. Railway Company, to be explicit.

Mr. MAXWELL: What knowledge does that give you of the accounts of the lines west of Pittsburg?

Mr. BRITTAIN: I have a general knowledge of the accounts by reason of my connection with the accounting department.

The CHAIRMAN: In a general way, what are your duties as special agent, as you style yourself.

Mr. BRITTAIN: Yes, sir; that is my title. I have special duties to perform on occasion and I have regular duties in the office in assisting in the general work of the controller's office—correspondence, compilation of statistics and other duties of that character.

Mr. MAXWELL: How long have you been connected with the accounting department?

Mr. BRITTAIN: With the accounting department of the
1572 P. C. C. & St. L. Railway Company since 1872.

Mr. MAXWELL: I asked you to prepare a statement of the gross earnings and operating expenses for the years 1898, 1899 and so much of 1900 as was passed. I will ask whether you have prepared it?

Mr. BRITTAIN: I have.

Mr. MAXWELL: And whether it is correct?

Mr. BRITTAIN: I believe it to be correct.

Mr. WARRINGTON: I wish to object to his testimony as well as to the paper, but not urging the objection to the *apper* simply because it is made up in the way that it is; in other words, wishing to carry out what I started to do in that respect.

The CHAIRMAN: We understand. You may proceed.

Mr. MAXWELL: We will offer that paper.

(The same is hereto annexed and marked "Exhibit No. 40, Brittain.")

Mr. MAXWELL: That is a statement of gross earnings and operating expenses for the years 1898, 1899 and up as late in 1900 as we have them—a comparison. Have you also made a statement showing the average earnings per ton per mile for a series of years, a statement of the percentages of the different classes of freight that have been carried during those years?

1573 Mr. BRITTAIN: I have.

Mr. MAXWELL: Is that statement correct?

Mr. BRITTAIN: Yes, sir.

Mr. MAXWELL: We will offer that in evidence.

(The same is hereto annexed and marked "Exhibit No. 41, Brittain".)

Mr. MAXWELL: The next one is a similar statement with respect to the P. C. C. & St. L.?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: The first one was what?

Mr. MAXWELL: The Pennsylvania Company. We will offer this

(The same is hereto annexed and marked "Exhibit No. 42, Brittain.")

The CHAIRMAN: One covers all the lines?

Mr. BRITTAIN: One covers the lines of the Pennsylvania Company known as the Northwest System and the other covers the lines operated by the P. C. C. & St. L. known as the southwest system.

The CHAIRMAN: The one is not included in the other.

Mr. BRITTAIN: No, sir.

Mr. WARRINGTON: Which is the parent company, the
1574 Pennsylvania Company or the Pennsylvania Railway Company?

Mr. BRITTAIN: I do not know what you mean by "the parent company"?

Mr. WARRINGTON: Which one owns all the stock of the other company?

Mr. BRITTAIN: There is not any of them owns all the stock.

Mr. WARRINGTON: Well, the great majority of the stock. What is the name of that company?

Mr. BRITTAIN: The Pennsylvania Railroad Company owns the majority of the stock of the Pennsylvania Company if that is what you mean?

Mr. WARRINGTON: The Pennsylvania Railroad Company is really the chief company?

Mr. BRITTAIN: Yes, sir; but the Pennsylvania Railroad Company does not own or control the P. C. C. & St. L.

Mr. WARRINGTON: No, but the intermediate company does. The first one controls the second and the second one controls the third. That is the way it goes?

Mr. BRITTAIN: Yes, sir.

Mr. MAXWELL: That is all I wish to ask. I offer these statements. These show the percentage of operating expenses to gross earnings.

1575 Mr. WARRINGTON: Which exhibit is that?

Mr. MAXWELL: That is exhibit No. 30. It gives the amounts for the year 1898 of both and 1899 and shows an increase for 1899 over 1898 of .86 per cent., an increase for the six months of 1899, ending December 31, over the corresponding six months of 1898 of 2.28 per cent., and an increase for eleven months ending May 31, 1900, over the corresponding months of 1899 of 2.09 per cent.

Com'r CLEMENTS: Does it give the totals of each as well as the percentage?

Mr. MAXWELL: It gives the totals of each as well as the percentage; and the earnings per ton per mile of the Northwest system have gone from 6.86 mills in 1892 to 5.15 mills in 1899; and for the Southwest system from 7.06 mills in 1892 to 5.66 mills in 1899. These statement- also show the percentage of the character of freight in large classifications, like the products of agriculture, animals, mines, and forests and manufactures and merchandise and also of the commodity articles during these various years.

The percentage of merchandise—it seems to me quite variable, but 2.2 per cent. is the largest percentage I see here of the total freight and .93 per cent seems to be the smallest percentage of the total freight; and the commodity articles run in the earlier

1576 years at 63 and a fraction against 36 and a fraction. Last year in the Southwest system it seems to be 72 and a fraction as against 27 and a fraction.

Mr. BRITTAIN: The percentage of tonnage carried at commodity rates on the Northwest system is even greater.

Mr. MAXWELL: On the Northwest system for 1899 the percentage of merchandise was .25 per cent. and the percentage of commodity articles was 87 and a fraction as against 12 and a fraction for all other classes.

Cross-examination:

Mr. WARRINGTON: Mr. Brittain, who is your immediate superior.

Mr. BRITTAIN: His name, do you mean?

Mr. WARRINGTON: Yes, sir.

Mr. BRITTAIN: Mr. John W. Renner, controller.

Mr. WARRINGTON: Where is he?

Mr. BRITTAIN: His office is in Pittsburg.

Mr. WARRINGTON: Now, what is his business?

Mr. BRITTAIN: He has a general supervision of all of the accounts of the company.

Mr. WARRINGTON: You call him the controller.

Mr. BRITTAIN: Yes, sir.

1577 Mr. WARRINGTON: Is he the controller for all of these companies, no matter who owns the one or the other?

Mr. BRITTAIN: Well, what companies do you include in "all these companies."

Mr. WARRINGTON: The Pennsylvania Railroad, the Pennsylvania Company and the P. C. C. & St. L.

Mr. BRITTAIN: He is not controller of the Pennsylvania Railroad Company nor has he any official connection with it. He is controller of the Pennsylvania Company and of the P. C. C. & St. L. Railroad Company.

Mr. WARRINGTON: How long has he been its controller, or controller of the two companies?

Mr. BRITTAIN: Since about May, 1891.

Mr. WARRINGTON: What was his position before that?

Mr. BRITTAIN: He was assistant controller.

Mr. WARRINGTON: How long was he in that position?

Mr. BRITTAIN: Well, for a number of years. I can not give you the number of years exactly.

Mr. WARRINGTON: Now, he is, in other words, and has been in the auditing department of these companies for twelve or fifteen years?

Mr. BRITTAIN: At least that long.

Mr. WARRINGTON: Now, what is your relation to that office?

1578 Mr. BRITTAIN: I perhaps ought to explain that for the greater portion of the time covered by these exhibits of tonnage, percentage of tonnage, I was chief clerk of his office, and although my title was changed from chief clerk to special agent I still have a large part in the carrying out of the work of the controller's office in the preparation of statistics.

Mr. WARRINGTON: Do you do anything on the roads proper in the way of purchasing anything, devising anything, constructing anything, or traffic or operation?

Mr. BRITTAIN: Nothing. There is not any one connected with the accounting department that does.

Mr. WARRINGTON: You are connected only with the accounting department?

Mr. BRITTAIN: Only.

Mr. WARRINGTON: How have your duties changed since you be-

came special agent? What do you do outside of the accounting department?

Mr. BRITTAIN: Nothing.

Mr. WARRINGTON: I do not understand what the special agency signifies?

Mr. BRITTAIN: I think I stated that I was special agent of the accounting department of those companies.

1579 Mr. WARRINGTON: There is a chief clerk in position there, is there not?

Mr. BRITTAIN: There is a chief clerk, yes sir.

Mr. WARRINGTON: So you do not occupy that office any more?

Mr. BRITTAIN: No, sir; I do not occupy that office any more.

Mr. WARRINGTON: And there is a controller and assistant controller.

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: Are you always in the office?

Mr. BRITTAIN: Yes, sir; that is where I am except when I am on some special work, perhaps once in a month, perhaps for a day or two I have some outside work to do.

Mr. WARRINGTON: Of what kind or nature?

Mr. BRITTAIN: In the examination of accounts of auxiliary corporations or anything of that character.

Mr. WARRINGTON: Anything else?

Mr. BRITTAIN: Nothing except in relation to accounts.

Mr. WARRINGTON: Who made up these exhibits Nos. 41 and 42?

Mr. BRITTAIN: They were prepared under my direction.

Mr. WARRINGTON: Who gave you directions as to what to prepare?

1580 Mr. BRITTAIN: The general counsel of the company requested of the controller such information, and I was detailed to prepare it.

Mr. WARRINGTON: Did you see the man that worked upon it?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: How many of these figures did you verify?

Mr. BRITTAIN: I verified in general the statement itself.

Mr. WARRINGTON: Did you verify the figures anywhere? If so, what ones?

Mr. BRITTAIN: I verified all the figures in a general way. I did not do the work in working up the details. I directed it and examined the data that entered into it.

Mr. WARRINGTON: How many books had to be gone into and over to get this information?

Mr. BRITTAIN: Which information?

Mr. WARRINGTON: On any and all of these exhibits—40 to 42.

Mr. BRITTAIN: The general books of the P. C. C. & St. L. Company and the general books of the Pennsylvania Company

1581 had to be examined to get this information.

Mr. WARRINGTON: How many books did that involve?

Mr. BRITTAIN: That involved only an examination of the ledger, because all of the other matter had been assembled in the ledger.

Mr. WARRINGTON: And it was easily obtainable?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: Well, why did you not carry it back farther?

Mr. BRITTAIN: Because we were not requested to carry it back farther.

Mr. WARRINGTON: Would it have been any trouble to do so?

Mr. BRITTAIN: No more trouble than to get that much.

Mr. WARRINGTON: All that was done here, as I understand, was to go to a ledger and copy out what is on here?

Mr. BRITTAIN: Not at all. I did not mean to give that impression.

Mr. WARRINGTON: What did you mean?

Mr. BRITTAIN: I think it has been already brought out in the testimony of other witnesses that these lines, the roads operated by these companies are quite numerous, and their accounts of earnings and expenses are kept separately. They had to be gathered
1582 together and drawn up in detail to get at the totals to produce these figures.

Mr. WARRINGTON: Well, take exhibit No. 40. That could have been carried back to 1887, could it not?

Mr. BRITTAIN: It could have been, yes sir.

Mr. WARRINGTON: The same thing is true of these others?

Mr. BRITTAIN: No, it is not true as to some of the others.

Mr. WARRINGTON: Well, there would have been a change in the name of the P. C. C. & St. L. There would have been one "C" dropped out.

Mr. BRITTAIN: That does not express the difference.

Mr. WARRINGTON: What does?

Mr. BRITTAIN: The P. C. C. & St. L., as at present organized, consists of a consolidation of four companies, which was accomplished in the latter part of 1890, and it would have involved a great deal of trouble to get the detail back of that.

Mr. WARRINGTON: You could have gone to 1890 with the same case?

Mr. BRITTAIN: No, I went back as far as I could on that to get a whole year.

Mr. WARRINGTON: Why, has the P. C. C. & St. L. been
1583 organized within a year?

Mr. BRITTAIN: The P. C. C. & St. L. was organized in the latter part of 1890.

Mr. WARRINGTON: You could have gone back to 1890.

Mr. BRITTAIN: I could not go back to 1890 and make a comparison with the preceding year.

Mr. WARRINGTON: You could go back to 1891?

Mr. BRITTAIN: Not and compare with the preceding year.

Mr. WARRINGTON: Could you go bavk to 1892?

Mr. BRITTAIN: I could and did. I could not go back any farther without the difficulties explained.

Mr. WARRINGTON: With the other companies you could have gone back farther?

Mr. BRITTAIN: Yes, sir; but I thought it was proper to stop at the same place on both.

Mr. WARRINGTON: You thought it was proper. I thought you were acting under instructions.

Mr. BRITTAIN: I was acting under instructions.

Mr. WARRINGTON: Well what thought had you about it then?

Mr. BRITTAIN: Well, in addition to ateing under instructions I was exercising somewhat my own idea of the propriety.

1584 Mr. WARRINGTON: I want to ask you about this P. C. C. & St. L. How much new track construction has it made since 1890 west of Pittsburg?

Mr. BRITTAIN: I do not know.

Mr. WARRINGTON: How much new equipment has it obtained in that time?

Mr. BRITTAIN: I do not know.

Mr. WARRINGTON: Do you not know that that company has been making very extensive and large improvements along the lines I have indicated since 1890?

Mr. BRITTAIN: It has made some.

Mr. WARRINGTON: Well, made some. Do you not know that they run into millions of dolars every year?

Mr. BRITTAIN: No, I do not know that.

Mr. WARRINGTON: Do you know what those matters are charged to—whether to operating expenses or to capital?

Mr. BRITTAIN: What company do you refer to?

Mr. WARRINGTON: I am speaking of the P. C. C. & St. L.

Mr. BRITTAIN: Some have been charged to capital account and some have been charged to expenses and some have been charged against income.

1585 Mr. WARRINGTON: Do you not know that there has been a controversy going on between the minority stockholders and the Pennsylvania majority stockholders on that subject?

Mr. BRITTAIN: I have read something in the papers about it.

Mr. WARRINGTON: Well, now, are you able to state what proportion of those permanent improvements are reflected on these papers as part of the operating expenses of that company?

Mr. BRITTAIN: No, I can not tell how much.

Mr. WARRINGTON: You did not try to separate that, did you?

Mr. BRITTAIN: I did not examine it.

Mr. WARRINGTON: If I understand exhibit No. 40—and it is a little difficult for a man to understand it in the short time I have had to look at it—take the year ending June 30, 1899, and the year ending the same date, 1898, what increase in earnings was there for that year?

Mr. BRITTAIN: $1,608,323.

Mr. WARRINGTON: What roads did that involve?

Mr. BRITTAIN: It involved all the roads of the Northwest and Southwest systems operated by those two companies I have named.

1586 Mr. WARRINGTON: Take the months ending December 31, 1899, in comparison with the six months ending December 31, 1898, and what increase was there?

Mr. BRITTAIN: In the gross earnings?

Mr. WARRINGTON: In the gross earnings.

Mr. BRITTAIN: $4,122,074.

Mr. WARRINGTON: Well, then, am I right in believing that the increase of earnings for the last six months of 1899 was nearly two and a half times greater than the earnings for the year ending June 30, 1899?

Mr. BRITTAIN: No, sir.

Mr. WARRINGTON: Well, what is the error? Point it out to me.

Mr. BRITTAIN: I do not see any error.

Mr. WARRINGTON: What is the error in my calculation—I did not mean to say in your paper?

Mr. BRITTAIN: If I understood you correctly you asked if you were correct in understanding that the earnings in the last six months of 1899 were two and a half times as great as they were for the whole year preceding.

Mr. WARRINGTON: Well, is it not the difference between $4,122,074 for the last six months mentioned and $1,608,323 for the year mentioned?

Mr. BRITTAIN: The figures you have just read are the in-
1587 creases over the corresponding periods for the preceding year.

Mr. WARRINGTON: Well, that is what I was alluding to. Was not the increase for the last half of the year 1899 more than twice as much as the increase for the year ending June 30, 1899?

Mr. BRITTAIN: As compared with the corresponding periods of the preceding year.

Mr. WARRINGTON: Is that right?

Mr. BRITTAIN: Yes, sir; that is correct.

Mr. WARRINGTON: Now, then, take the eleven months ending May 31, 1900; that is to say, from July 1, 1899, to the end of last month; there the increase was nearly twice as much as it was for the six months preceding, was it not? In other words, it was nearly $8,000,000.

Mr. BRITTAIN: It was $7,603,814 as compared with the corresponding eleven months of the preceding year.

Mr. WARRINGTON: That is meant, then, to correspond with the eleven months, is it?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: Now, have your operating expenses for periods corresponding to those increased in any greater ratio than your earnings?

1588 Mr. BRIT-AIN: Yes, sir.

Mr. WARRINGTON: Well, let us see. It is $1,460,742 for the year ending June 30, 1899, is it not?

Mr. BRITTAIN: The increase in operating expenses that year over the preceding year is $1,460,742.

Mr. WARRINGTON: Now, for the next period mentioned the increase is $3,351,905 or it is the difference between 14 and 33, to drop decimals, in expenses?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: And those figures are to be compared with 16 and 41 in reference to earnings, dropping decimals. That is about the way it runs, to state it shortly?

Mr. BRITTAIN: Yes, sir. I did not quite understand the way you put that.

Mr. WARRINGTON: What I am calling your attention to is that if you take the quantities, the amounts of gross earnings and the amounts of operating expenses and compare the increase in each column that your earnings have more than kept pace with your expenses in point of increase?

Mr. BRITTAIN: They have increased in a larger amount but in a smaller proportion.

Mr. WARRINGTON: Well, have they not increased in a greater ratio?

1589 Mr. BRITTAIN: No, sir; in a less ratio.

Mr. WARRINGTON: Well, those figures we can work out ourselves. You know this, do you not, that your companies have been earning in excess of the expenses so as to pay dividends and fixed charges?

Mr. BRITTAIN: I believe the Pennsylvania Company has paid no dividends in that period and I am not sure that the P. C. C. & St. L. ever paid dividends within this period.

Mr. WARRINGTON: The Panhandle has paid on its preferred stock, has it not, and on its bonds?

Mr. BRITTAIN: It has paid interest on its bonds.

Mr. WARRINGTON: The only controversy that has been in existence has been as to common stock and how much has been paid instead of carrying on these heavy improvements. Is not that so?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: I will ask you if it is not so that they have carried eight millions since 1890 of the P. C. C. & St. L. earnings into permanent improvements?

Mr. BRITTAIN: I do not know what amount they have carried there.

Mr. WARRINGTON: Besides paying periodical dividends.

1590 What Pennsylvania company is it, the Pennsylvania Company or the Pennsylvania Railroad Company, that has stock on the market ranging at about 125 or 126.

Mr. BRITTAIN: The Pennsylvania Company, I do not believe, has any stock on the market.

Mr. WARRINGTON: The Pennsylvania Company does not have any stock on the market, does it?

Mr. BRITTAIN: I know of none.

Mr. WARRINGTON: Then, take the other one, the Pennsylvania Railroad; it has stock?

Mr. BRITTAIN: I believe so.

Mr. WARRINGTON: Well, do you know that it has about three hundred millions of stock?

Mr. BRITTAIN: I do not know just what stock it has. I am not concerned with the Pennsylvania Railroad Company.

Mr. WARRINGTON: Do you not know what its market price is and that it has been paying dividends on this stock right through these years?

Mr. BRITTAIN: That has nothing to do with these figures.

Mr. WARRINGTON: Well, is the difference in decrease on that

company the same as it is here, or is there a change according to companies?

1591 Mr. BRITTAIN: I do not know.

Mr. WARRINGTON: You do not know anything about it?

Mr. BRITTAIN: I do not know anything about the Pennsylvania Railroad's records.

Mr. WARRINGTON: The earnings of these companies contribute to the Pennsylvania Railroad Company's earnings do they not?

Mr. BRITTAIN: The relations between the Pennslyvania Railroad Company and the Pennsylvania Company and the P. C. C. & St. L. are known to be close, and that traffic is interchangeable between them.

Mr. WARRINGTON: Now, take these exhibits Nos. 41 and 42, the commodity rates embrace products of agriculture, animals, mines and manufactures, do they not?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: What line is that on?

Mr. BRITTAIN: What line of railroad?

Mr. WARRINGTON: Yes, sir.

Mr. BRITTAIN: No. 41 is on the line of the Pennslyvania Company.

Mr. WARRINGTON: How is it about commodity rates with the others? Are they on products of agriculture, animals, mines and manufactures?

1592 Mr. BRITTAIN: Yes, sir; there are commodity rates on those groups of classes and there are also other rates. Other articles in those classes are carried at other than commodity rates.

Mr. WARRINGTON: Now, you do not state rates at all on the articles included within the commodity rates.

Mr. BRITTAIN: No, sir; the tariffs show the rates.

Mr. WARRINGTON: Now, they do not appear in any of the classifications or class rates, do they?

Mr. BRITTAIN: I am not familiar with the manner of preparing the tariffs and how commodity rates are shown on the tariffs. I have no connection with the traffic department and I do not know how they prepare their tariffs.

Mr. WARRINGTON: How did you make this up then? Could anybody go and copy this out?

Mr. BRITTAIN: No, sir; I conferred with the traffic manager as to what classes of articles reported to the Interstate Commerce Commission come under the head of commodity rates and what do not, and these exhibits were prepared under his instructions in that regard.

Mr. WARRINGTON: What else did he do? What else did you consult him about?

Mr. BRITTAIN: I do not think I consulted him about anything else.

1593 Mr. WARRINGTON: Well, now, what articles are shown on here which are in the classification and tell me which one of the class rates?

Mr. BRITTAIN: I do not know anything about the class rates that are in. I only know——

Mr. WARRINGTON: Do you know the classes they are in?

Mr. BRITTAIN: Let me explain what I know about them, if I may. The first item here in this statement I have in hand shows products of agriculture 3.77 per cent. of the total freight tonnage carried at commodity rates and 1.19 per cent. of that group carried at other than commodity rates.

Mr. WARRINGTON: But you have no idea of what are embraced in the others or in what classes they belong, have you?

Mr. BRITTAIN: May I refer to a copy of the report of the company to the Interstate Commerce Commission?

Mr. MACDONALD: Here is one right here.

Mr. BRITTAIN: Page 63 (refering to report). Speaking generally, the articles carried at commodity rates, as is well known by the Commission and by everyone, I suppose, are the heavy freights such as grain and flour and coal and ores, and other products of
1594 mines and iron products, and the great bulk of the tonnage of the Pennsylvania Company and of the P. C. C. & St. L. Railway are shown by these statements of our reports as filed with the Interstate Commerce Commission for these years, ranging in the Pennsylvania Company from 82½ per cent. to 87.37 per cent., from 1892 to 1899, leaving only a little less than 17½ per cent. of other articles in 1892 and only a little over 12½ per cent. of other articles in 1899.

Mr. WARRINGTON: Now, you are alluding to exhibit No. 41. Those commodity rates were made by your company, were they not?

Mr. BRITTAIN: I suppose so.

Mr. WARRINGTON: It was not done because anybody ordered it to be done, was it?

Mr. BRITTAIN: It was done in order to—well, it was done by the traffic officers of the company.

Mr. WARRINGTON: Every article that was carried into those commodity rates was taken from the class rates. Is not that so?

Mr. BRITTAIN: I do not know.

Mr. WARRINGTON: If you had kept those commodity rates in the classification there would have been quite a difference from
1595 what you are showing, would there not?

Mr. BRITTAIN: I do not think I understand the question.

Mr. WARRINGTON: Well, were not the commodity rates in every instance lower than the class rates?

Mr. BRITTAIN: Lower than the class rates that the same articles would have been in if there were not that commodity rate?

Mr. WARRINGTON: Yes, sir.

Mr. BRITTAIN: I do not know.

Mr. WARRINGTON: Is not that your best judgment or impression about it?

Mr. BRITTAIN: I think it likely.

Mr. WARRINGTON: One other thing I want to ask you. You give in the last line of both these exhibits, if I understand them, figures showing average earnings per ton per mile from 1892 to 1899. Is that right?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: Did you in any way figure out the corres-

pondaing figures for that, the cost per ton per mile, so that you could put those figures in that line for me?

Mr. BRITTAIN: I did not.

1596 Mr. WARRINGTON: Are you able to state that the cost per ton per mile was not less every time, every year, than the figures you have stated here as average rate or average earnings per ton per mile?

Mr. BRITTAIN: I am not able to state that.

Mr. WARRINGTON: You do not know?

Mr. BRITTAIN: It is impossible to correctly determine the cost per ton per mile—practically impossible to determine the cost per ton per mile of any given commodity.

Mr. WARRINGTON: Is it impossible to state the cost per ton per mile of all the articles hauled?

Mr. BRITTAIN: It is impossible to state that with accuracy.

Mr. WARRINGTON: Can you tell the average earnings per ton per mile?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: Well, how do you do that?

Mr. BRITTAIN: Divide the total ton mileage into the total freight receipts.

Mr. WARRINGTON: Suppose you find out the total amount of expense that your company was put to in a year and go through the same form, what would be the result?

1597 Mr. BRITTAIN: If we could find out what the expenses were for conducting freight traffic, the same operation would produce that result, but unfortunately we can not.

Mr. WARRINGTON: Then, the difficulty is in ascertaining what expenses there are which should go to freight. Is that right?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: Now, is there any other difficulty?

Mr. BRITTAIN: That is the chief difficulty.

Mr. WARRINGTON: Do you mean to say you can not keep and do not keep a separate account of your passenger traffic from that of your freight traffic?

Mr. BRITTAIN: We keep a separate account of the receipts, but not of the expenses.

Mr. WARRINGTON: Well, can you not trace the expenses?

Mr. BRITTAIN: We have a method of arriving at an approximation of it.

Mr. WARRINGTON: Is it not contained in your reports to this Commission—has it not been?

Mr. BRITTAIN: It has not been contained in our reports to this Commission since 1893?

Mr. WARRINGTON: It was prior to that?

Mr. BRITTAIN: Prior to that. May I explain? It was discontinued because the Commission found that the inaccuracy of

1598 the figures rendered it of little value.

Mr. WARRINGTON: You use that figure, however, in your estimates of what you are doing, and to satisfy the company and its stockholders of what it is doing, do you not?

Mr. BRITTAIN: It is customary to figure it, but it is regarded by everyone who understands the matter as a mere approximate and of no value as an accurate statement.

Mr. WARRINGTON: Well, why does the president use it in making his reports to the stockholders when he is rendering an account of his annual work?

Mr. BRITTAIN: I do not know.

Mr. WARRINGTON: Do you mean it is calculated to mislead the stockholders?

Mr. BRITTAIN: No, I do not mean that?

Mr. WARRINGTON: Is it designed for that purpose?

Mr. BRITTAIN: I think I stated that it was made——

Mr. MAXWELL: Do you know whether the president of the Pennsylvania Company designs it for that?

Mr. WARRINGTON: I do not apprehend it is for that either by any manner of means. I am asking you what it is done for. You are special agent in the accounting department. Where would the president go, except to that department to get information when
1599 he comes to make a report on that?

Mr. BRITTAIN: Such figures would be compiled by the accounting department to meet his directions.

Mr. WARRINGTON: You know that that has been done from year to year for him——

Mr. MAXWELL: For whom?

Mr. WARRINGTON: The President.

Mr. MAXWELL: What company?

Mr. WARRINGTON: The president of your company.

Mr. MAXWELL: I know you do not want to suggest that something appears which does not——

Mr. WARRINGTON: I insist that counsel have no right to interfere with the witness.

The CHAIRMAN: Ask your question, Mr. Warrington.

Mr. WARRINGTON: Do you not know that such figures are made from year to year in the accounting department for the use of the Pennsylvania Railroad officers?

Mr. BRITTAIN: The Pennsylvania Railroad officers?

Mr. WARRINGTON: Well, railroad—I do not know.

Mr. BRITTAIN: I wish you would not ask me about the Pennsylvania Railroad Company, because I do not know anything about it.

1600 Mr. WARRINGTON: I am not asking you now to testify and do not want to mislead you a minute. I simply want to know whether or not such figures are made up in the accounting department with which you are connected for somebody every year.

Mr. BRITTAIN: They have been made up for a number of years past.

Mr. WARRINGTON: Do you know now for whom?

Mr. BRITTAIN: They are made up and included in the returns made to the president with the annual statistics of the company.

Mr. WARRINGTON: Now, you know where those figures are kept, do you not?

Mr. BRITTAIN: I know the formula by which they are prepared.

Mr. WARRINGTON: You could produce such figures if you were asked to, could you not?

Mr. BRITTAIN: I could produce such approximate figures. They are always understood by every body that uses them to be merely approximate figures and they cannot be anything else.

Mr. WARRINGTON: Have you any other way by which the company can conduct its business with safety to itself? If you
1601 have, tell us what other way you can devise for determining whether the freight department is doing its share of the work. I wish you would observe that question and answer it—I mean the profit earning share.

Mr. BRITTAIN: By means of this calculation to ascertain approximately the amount of earnings and cost per ton per mile and per passenger per mile, the officers of the company are able to determine approximately what the different departments are doing in regard to their special lines.

Mr. WARRINGTON: Well, now, there is a purpose for that, is there not? It is to enable them to exert greater economy or to introduce better administrative work, or something of that character, is it not, so as to improve the general operating features of your road?

Mr. BRITTAIN: I do not know for what variety of purposes the officers may want such information.

Mr. WARRINGTON: Do you know any of them? Have I not stated some of them?

Mr. BRITTAIN: It is likely they want them for such purposes.

Mr. WARRINGTON: Do you know of any other plan that is resorted to by the officers of the company for their own benefit?

1602 Mr. BRITTAIN: Any other method of what?

Mr. WARRINGTON: Of ascertaining the cost per ton per mile.

Mr. BRITTAIN: They arrive at the nearest approximate they can naturally.

Mr. WARRINGTON: In the way you described?

Mr. BRITTAIN: I have not described just the way it is done, I think.

Mr. WARRINGTON: What I am asking you—and I do not want to delay the Commission any longer upon it—I want to know if there is any other method known to your accounting department or to you that is safer than the one you allude to?

Mr. BRITTAIN: We use the one that comes nearest approximating the result, according to our judgment.

Mr. WARRINGTON: That is the one you have been telling us about?

Mr. BRITTAIN: Yes, sir.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: Is there any way of apportioning between freight and passengers the cost of maintenance?

Mr. BRITTAIN: No accurate way.

Mr. MAXWELL: Nor any way of telling the wear and tear
1603 of the freight train as compared with the passenger train?

Mr. BRITTAIN: None whatever.

Mr. MAXWELL: Is the attempt to apportion the cost between the various departments recognized by accountants as accurate and practicable.

Mr. BRITTAIN: No, sir.

Mr. MAXWELL: Do you keep your express earnings separate?

Mr. BRITTAIN: We do.

Mr. MAXWELL: And your mail earnings separate?

Mr. BRITTAIN: Yes, sir.

Mr. MAXWELL: And your passenger receipts separate?

Mr. BRITTAIN: Yes, sir.

Mr. MAXWELL: And there are other receipts you keep separate?

Mr. BRITTAIN: Yes, sir.

Mr. MAXWELL: Is there any way of apportioning between those various receipts with any degree of accuracy at all the expenses?

Mr. BRITTAIN: No. May I explain in what way the approximate cost is ascertained.

Mr. MAXWELL: You need not explain it unless the Com-
1604 mission wants it, because I suppose it is a subject they are generally familiar with.

The CHAIRMAN: Yes, in a general way, we are familiar with it.

Mr. MAXWELL: Then, I do not think we will detain Mr. Brittain.

The witness was excused.

The CHAIRMAN: Of course, if Mr. Warrington wants to get at the plan——

Mr. WARRINGTON: Well, I feel that I am tiring the Commission.

The CHAIRMAN: That is immaterial if you desire to get out any fact that is useful in this case. We know perfectly well that railroad managers and accountants express their inability to make any division of their expenses that will be any more than an approximation. Of course, a given road can adopt a classification of those expenses which in the judgment of their officers is justified by the experience of their particular road. So, they get a formula. If they use that formula they get certain results. If you apply that formula to another road where the relation between freight and passengers is very different it would lead to most misleading results. In
1605 other words, while a degree of approximation can be obtained in one way, it is a perfectly valueless factor for our purposes, which is to get averages for the whole country or for the different parts of the country. It was discontinued for that reason.

Mr. WARRINGTON: I do not care to argue the case at this stage, or any part of it, because we will have that to do later, but it ought to be apparent, it seems to me, that when a company comes along and states what this company urges, it ought to be able to tell whether it is making money or losing money on freight. I do not care how they ascertain it. They know for their own purposes; and what I am seeking to do is to ascertain whether that is so on the Pennsylvania Road. I affirm the proposition that they are not losing and that there are abundant figures here to show it. I am trying to show by some man from that company what I conceive that other facts from the company demonstrate.

The CHAIRMAN: If you desire to ask this witness what formula is applied by the Pennsylvania Company for the purpose of dividing expenses between freight and passenger service and what results have been reached by the application of that formula, if he knows,
1606 we will allow the question.

Mr. WARRINGTON: Well, if your honors do know about it, I think I will dismiss it. I know enough about it for my purposes.

The CHAIRMAN: I say again that if you want to know whether this company does undertake for its own information or the information of its president to make a division between their passenger and freight expenses, with the view of ascertaining approximately what it costs them to carry their freight and he knows what results are obtained by the use of that formula, you may have that information.

Mr. WARRINGTON: I have got everything but the formula and the figures. He can not give me the figures, and I will not take your time to ask him to repeat the formula.

1607 THOMAS H. JOHNSON, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: Give us your residence and occupation.

Mr. JOHNSON: I reside at Pittsburg. I am chief engineer of the P. C. C. & St. L. Railway.

Mr. MAXWELL: How long have you been chief engineer of that railway?

Mr. JOHNSON: Since January, 1896.

Mr. MAXWELL: And what relation did you have to the railway prior to that time?

Mr. JOHNSON: I was principal assistant engineer.

Mr. MAXWELL: What department of the railway comes under your charge?

Mr. JOHNSON: All construction work comes directly under my charge and I have advisory direction over maintenance of way, but I do not take personal charge of the ordinary maintenance.

Mr. MAXWELL: Mr. Johnson, what we are trying to find out here is whether the cost of operating a railroad, so far as your department is concerned, has increased recently, and if so, when and to what extent. Now, you tell us in your own way.

1608 Mr. WARRINGTON: I object to this. He says all the construction work is under him and the maintenance is only within his advisory jurisdiction. Is that calculated to inform him upon the subject of the question?

The CHAIRMAN: We will admit his answer.

Mr. WARRINGTON: I want to reserve my objection upon the other ground.

Mr. JOHNSON: Before answering that I want to extend my answer to the first question. In the matter of maintenance, all matters connected with the renewal and construction of bridges comes directly under my charge. The question of the maintenance of bridges comes directly under my jurisdiction.

Mr. MAXWELL: With that further explanation of what you have to do, let us know how much money it takes to do it.

Mr. JOHNSON: The prices of materials used in tracks and bridges diminished from 1890 to 1894 or 1895 and continued low during 1895 and 1896; and in 1897, 1898 and 1899, there was a gradual rise in the prices.

Mr. CHAIRMAN: Pardon me one moment, Mr. Maxwell, but with reference to the suggestion you make, it occurs to me that if you are not already familiar with the reports that are made to this
1609 Commission, you could take occasion to examine one and see to what extent it includes the details of facts which you have been showing by your witnesses, and if you are satisfied that it does and with the extent to which it does, it may make it unnecessary for you to go into details for each road represented. You may examine them with our assistant statistician. He says that substantially everything appears in the reports as to what is shown here except costs of materials. For instance, wages are classified. I think there are eighteen different classes of railway employees and the number in each class is shown and the wages paid in each class. That makes a pretty complete disclosure of wages. Then, of course, the expenses of general superintendents, salaries of general officers makes an item. Then, the gross receipts, expenses, percentage of expenses to receipts, the tonnage, the rate per ton per mile,—almost all facts of that kind appear in these reports.

Com'r CLEMENTS: But none of those are in for this fiscal year.

Mr. MAXWELL: Then, I suppose, you would depend on your statistician to make the comparisons to inform you?

The CHAIRMAN: I mean to say that those reports being by
1610 consent of all parties in evidence in this case, we should feel warranted in referring to them in support of any statement we might make in writing up a decision of this case. In other words, the case would not lack for want of proof of any fact which appears in your annual reports. Observe that that would not go into the cost or relative cost of materials. That does not appear. Matters, therefore, connected with construction and maintenance, other than wages, would probably be outside of those reports.

Mr. MAXWELL: May I ask your honor whether your reports show the rates of wages that are paid.

The CHAIRMAN: Yes, sir. I suggest that you take occasion to look at one of those reports. And while we are on that subject, if there is no objection to it, it is suitable that the reports made by these defendant carriers for the year which ends on Saturday may be regarded as in evidence in this case.

Mr. WARRINGTON: We consent.

The CHAIRMAN: We should be getting those reports almost any time after July 1, bringing those figures down to July 1. We will have almost all of them by the 1st of September. Is there any objection to that, Mr. Maxwell?

1611 Mr. MAXWELL: We have no objection to their bein- examined. Mr. Johnson stepped over to say to me that he thought the cost of steel rails appeared from the last report.

The CHAIRMAN: Well, I do not know but it does. So, I again suggest that when you come to consider how much of this that

both sides have shown is really in these reports, it comes to a question of facilitating our labors by pointing out the particular facts which you regard as important and desire to bring specially to our attention. When you make yourself familiar with what does appear in those reports and remember that all those made are in evidence in this case and that those to be made for the year now closing are also to be in evidence in this case, it may enable you to shorten your examination.

Mr. MAXWELL: I am going to see if the effort I propose now to make to shorten up on this witness is agreeable to counsel on the other side. Mr. Johnson, did you hear the testimony of Mr. Coverdale in reference to increase in cost of labor and material on the Northwest System?

Mr. JOHNSON: I only heard the latter part of Mr. Coverdale's testimony. I was not in during the first part.

1611½ The CHAIRMAN: It is evident that you can not finish with this witness to-night. We will take an adjournment until 10 o'clock tomorrow morning.

At 5:10 o'clock p. m. the Commission adjourned until 10 o'clock Thursday, June 28th, 1900.

1612 Eighth Day.

WASHINGTON, D. C., *June* 28, 1900.

The CHAIRMAN: Gentlemen, you may proceed.

Mr. MAXWELL: Mr. Johnson, will you take the stand.

Mr. JOHNSON resumes the stand.

Mr. MAXWELL: Do you recall the question that was put to you just before adjournment last night?

Mr. JOHNSON: I do not exactly.

Mr. MAXWELL: I wish you would tell us what, if any, increase there has been in the past few years in the expense of your department.

Mr. JOHNSON: The prices of labor and material were at their lowest in 1895 to 1896. Since 1897 there has been a steady increase in cost.

Mr. MAXWELL: Now, let us have a little more definite statement as to the amount, or rate of increase, and of what it consists.

Mr. JOHNSON: In the item of cross-ties, the price from 1890 to 1894 was about 50 cents, the general average. In 1895 and 1896 it was 45 cents. In 1897 and 1898 it was 46½ cents. In

1613 1899 it was 53½ cents. In 1900 it is 56½ cents. So, from the lowest price in 1895 and 1896 to the present time there has been an increase of 11½ cents. In the three years since 1897 there has been an increase of 10 cents.

Mr. MAXWELL: Per tie?

Mr. JOHNSON: Per tie; Yes, sir:

Mr. MAXWELL: What percentage of increase does that represent from 1897 to 1900.

Mr. JOHNSON: About 22 per cent.

Mr. MAXWELL: Now give us the fluctuations in other material r supplies.

Mr. JOHNSON: In the matter of steel rails from 1890 to 1893 he price averaged about $30.00 per ton. In 1894 it was $24.50. n 1895 it was $22.00. In 1896, my memorandum says $28.00 ut from personal recollection I think there is a clerical error in my nemorandum; I do not think it was up as high as $28.00 at that ime.

Mr. MAXWELL: What is your recollection?

Mr. JOHNSON: My recollection is that it was $22.00, the same as 895. It dropped in 1897 to $17.00. In 1898 it was $18.00, in 1899 it was $18.00, and in 1900 it has jumped up to $33.00.

1614 Mr. MAXWELL: Can you tell us when that advance to $33.00 took place?

Mr. JOHNSON: I only have that from the contracts made for delivery in 1900. As to those contracts I am not quite sure as to the late at which they were made, but I think about September 1899.

Mr. MAXWELL: Now, let us have other items of cost.

Mr. JOHNSON: In the matter of bridges, I should explain that here is a portion of our bridge work which is paid for at a price F. O. B. cars at Pittsburg, and the erection done by the Company's nen. In the other portion the contracts include erection. For bridges contracted for f. o. b. cars—the average price paid in 1896 was 2.20 cents a pound; in 1897 1.99 cents. In 1898, 2.20 cents. In 1899, 3.07 cents. In 1900, 3.90 cents. For the work, erected, in 1896 it was 3.28; in 1897 2.69; In 1898, 2.93; In 1899, 3.92, and in 1900 it is 5.33.

Mr. WARRINGTON: When you say, "Erected" you mean erected by whom?

Mr. JOHNSON: By the Bridge Company. A part of the contracts were for putting up the structure.

1615 Mr. MAXWELL: When were the contracts made for the bridges for which you give the price as of 1900.

Mr. JOHNSON: They were made, some of them, I think in December; most of them in January and February.

Mr. MAXWELL: Give us other items—grading, labor.

Mr. JOHNSON: The labor feature of the work done under my department is nearly all contract work, and the wages paid by the contractor in 1898, was generally $1.25 per day. It is now $1.50.

Mr. MAXWELL: Are those items included in the other figures?

Mr. JOHNSON: This is labor outside of bridges, for grading and other work.

Mr. MAXWELL: I do not want you to go into details as to the matter of track elevation, but I wish you would say in a general way whether, and to what extent, cost has been imposed upon the company within a few years past in that connection.

Mr. Warrington noted an objection.

The CHAIRMAN: We are in considerable doubt whether the line of inquiry suggested by this question would lead to the disclosure of

useful information. The difficulty seems to us to be in distinguishing between those expenditures which are made voluntarily
1616 in the interest of the carrier and under circumstances which indicate that increased traffic will more than compensate for the investment, and those other expenditures which are required by local governments, municipal ordinances, State Legislatures and Congressional action, and those required by the growth of cities, and great increase in population, necessitating practically a different and better construction than that which answers all the requirements of a country more sparsely settled. For example, I take it, ordinarily, that if the railroad builds a tunnel for the purpose of reducing distance, or reduces its grades that we could hardly regard that particular expenditure as a reason for increasing rates, or as a reason for refusing to reduce rates on a particular article. On the other hand, Congress has required by its enactment a very large expenditure for automatic couplers and other safety appliances, which apparently will not for a long while, perhaps, result in economies, or in increasing traffic which will at all compensate the carrier for the great cost of putting on those appliances. It would seem that the fact that expenditures of that kind have been required is a proper fact to be taken into account in determining the reasonableness, or otherwise, of charges in question. As to particular instances of what some one car-
1617 rier has done, or has been required to do in respect to elevating its tracks or removing grade crossings, and matters of that sort, it would hardly have an appreciable bearing upon the question. The general fact that changed conditions and the situation in large cities, and elsewhere have required expenditures, which are not as current and usual would seem to be within the range of this inquiry. We are inclined to think that it is a prudent course to allow some general testimony along the lines I have indicated and are influenced to do so for this reason. This is not like trying a case before a jury. If upon more mature reflection we are of opinion that such testimony is not material, no finding will be made upon that testimony, or which would require those facts for its support. It seems the safer course to take the evidence and judge of the proper use to be made of it when we come to the labor of deciding what ought to be done in this case. We think, Mr. Maxwell, that in that view and reserving for future consideration its materiality and the weight which should be given to it in disposing of the case, you may show in a general way that unusual expenses have been required, or are required at the present time on account of changed conditions or otherwise.

1618 Mr. MAXWELL: Mr. Johnson, please tell us to what extent these expenses with respect to track elevation have been incurred, where and under what circumstances?

The CHAIRMAN: We do not think it worth while, Mr. Maxwell, to go into great detail.

Mr. JOHNSON: In the City of Chicago we expended in 1897 under the requirements of a city ordinance $287,000.00. There is another ordinance, which has been passed, but on which the expenditure has

yet been made, the estimated cost of which will be $460,000.00.
f there are two ordinances now pending before the City Council,
of which will involve an expenditure——
Ir. WARRINGTON: You think they may possibly pass an ordi-
ce, do you?
Ir. JOHNSON: They are now pending before the city council. The
egate of those four items of track elevation will amount to about
e and a quarter millions.
Ir. MATTHEWS: Including those you gave for 1897 and 1900?
Ir. JOHNSON: Yes, sir.
Ir. MAXWELL: How was that track elevation brought about—by
company?
Mr. JOHNSON: Brought about by the City Council in re-
9 sponse to a popular agitation of the people of Chicago.
Mr. WARRINGTON: Do you think that is the way to prove
?
Ir. MAXWELL: How else would you prove it?
Ir. WARRINGTON: I think there is a very proper way—to bring
ordinance here. A man should not testify about what people
ık.
'he CHAIRMAN: We do not give that any weight.
Ir. MAXWELL: He can testify to that fact. He is the engineer of
road and he can tell whether it is the result of voluntary action
the part of the company or whether it was imposed upon them.
can tell how it was done and under what circumstances.
'he CHAIRMAN: It does not seem necessary to argue it further.
will take the testimony and let it stand subject to the objection.
Johnson, let me ask you whether from your knowledge of the
road situation, say in trunk line territory, and from your exper
e and observation, is it or is it not true that at the present time
re is a large demand, either from the railroad interest itself or
m the public acting through municipal bodies and local authority
the elevation of track, for new and more costly bridges, heavier
rails and matters of that sort?
20 Mr. JOHNSON: There is a growing tendency in all of our
larger cities upon the part of the people to demand track ele-
ion. In the matter of bridges and heavier rails, that expenditure
he outgrowth of the increased weight of the rolling stock.
Commissioner CLEMENTS: I suppose all of those things are in great
easure promotive of the welfare and the proper conduct of the
siness of railroads as well as to the interest of the public.
Mr. JOHNSON: Do you refer to track elevation?
Commissioner CLEMENTS: Yes, sir.
Mr. JOHNSON: The elevation of tracks and the separation of grade
ssings, does not result in direct economy, except in relieving us of
e expense of watchmen and the resultant expense of incidental
mages. Just what relation that bears to the interest on cost I have
ver been able to determine.
Commissioner CLEMENTS: In some measure, while it costs more
and may cost a good deal more than it saves, it does save you
21 from killing persons.
Mr. COLSTON: It is hoped so.

Commissioner CLEMENTS: That is the tendency.

Mr. JOHNSON: Yes, sir.

Commissioner CLEMENTS: And can you not operate your trains into a great city like Chicago with a great deal less interruption than you can where you run along on grade?

Mr. JOHNSON: Yes, sir; it makes a little difference in the running time, which, however, affects the passenger himself more than it does the railroad; the passenger gets a quicker trip; and in the handling of freight it makes some little difference in switching, because we do not have to stop to clear crossings.

Commissioner CLEMENTS: And it does contribute to improve the road?

Mr. JOHNSON: Certainly.

Commissioner CLEMENTS: Mr. Colston's road constructed a tunnel in Baltimore 5 or 6 years ago. I do not know whether it was required by ordinance or not.

Mr. COLSTON: They wished, I believe, that it had never been required by anybody before they got through. They went into the hands of receivers.

Mr. WARRINGTON: Not because of the building of the tun-
1622 nel.

Mr. COLSTON: That probably contributed to it.

The CHAIRMAN: We all know as a matter of observation and we might almost take judicial notice of the fact, that changed conditions have brought about a necessity for heavier and more efficient rolling stock. It has been made necessary to have heavier rails, stronger bridges, and to reduce grades wherever practical to do so. We know that the great growth of cities, the increase of population, has made it necessary, or at least very desirable that tracks should be elevated and grade crossings eliminated, as well as other general improvements perfected in the matter of road way and equipment, all of which involves very large expense. Whether the increased economies will pay for the interest on that expense, no one knows. Probably taking it all together they will not. In some instances they may, and in others they may not. And it all comes back to what I said. It seems to me that the general effect of existing conditions, the difference from those which formerly obtained have required expenditures of this character.

Mr. MAXWELL: I only want to ask in the line of your honor's suggestions one more question. What, if any effect, has this track elevation, heavier equipment, etc. on the cost of maintenance?

1623 Mr. JOHNSON: It adds to the cost of maintenance in two ways; first, it requires heavier rails, and in the second place the heavier rail, on account of its size and conditions of manufacture does not give as long service as the lighter rail under the same traffic; but with the lighter rail, on account of its flexibility we cannot keep the track in service, so we have to have the heavier rail to keep the track in proper condition, but as I said, the heavier rail wears out sooner under the same traffic than the lighter rail.

Mr. MAXWELL: What is the comparative cost of maintainenance of elevated track and surface track?

Mr. JOHNSON: The only difference there would be the additional expense of keeping the bridges over the streets painted and such incidental items of maintainenance as grow out of the presence of the structure.

Mr. MAXWELL: Take whatever difference there is. Does it involve any additional cost?

Mr. JOHNSON: Yes, it does.

Mr. MAXWELL: That is all.

Mr. COLSTON: These conditions you have spoken of are general, are they not? They are not confined to your road alone?

Mr. JOHNSON: No, they are not.

Mr. COLSTON: That is all.

1624 Cross-examination:

Mr. WARRINGTON: Is it true that the freight trains are run over these elevated tracks which are built in the large cities of the country, or are the freight trains frequently carried around, especially the through freights, so as to avoid those tracks.

Mr. JOHNSON: There are one or two cities where there are Belt Roads on which the interchange of freight between the different railroad companies is handled, without carrying it into the cities, but that has no relation to the subject of track elevation.

Mr. WARRINGTON: Well, I wish you would tell us what your understanding is of the relation of the freight traffic to elevated roads within the cities. Take Philadelphia, for instance. Do you say that all of the freight traffic that comes in on the Pennsylvania road goes over that elevated track, or those elevated tracks which run up to the main depot at the city hall?

Mr. JOHNSON: They do not run freight into the passenger depot. That track elevation is wholly for passenger traffic into the depot.

Mr. WARRINGTON: That is my understanding of it. I think you are right. Is there an elevated road in Philadelphia over
1625 which the freight traffic passes?

Mr. JOHNSON: I am not sufficiently acquainted with Philadelphia to be able to answer your question.

Mr. WARRINGTON: Your understanding is that the elevated track is for passenger traffic only?

Mr. JOHNSON: No, sir; not on our line.

Mr. WARRINGTON: I mean in Philadelphia?

Mr. JOHNSON: I do not know anything about Philadelphia. It is not in my jurisdiction.

Mr. WARRINGTON: Have you ever been in Philadelphia?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: When—at the World's Fair? Have you not been there since that time?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: When?

Mr. JOHNSON: On-e or twice. But I am not familiar with the railroad property in Philadelphia; that is what I meant by my answer.

Mr. WARRINGTON: Let me ask you about Chicago. You are familiar with that, I suppose?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: Is this not true, that there is a large
1626 suburban traffic—and I mean suburban in the broad sense, because I know Chicago reaches out almost to the limits of the County—there is a large traffic reaching out a great way from the business center of the city, which demands rapid transit, and have you not a large amount of that, and was it not one of the purposes of elevating the tracks to meet that demand?

Mr. JOHNSON: No, sir; on our line we have practically no suburban traffic.

Mr. WARRINGTON: What lines have?

Mr. JOHNSON: The Illinois Central is the only one that has any large amount of suburban traffic and which began its track elevation with special reference to that traffic.

Mr. WARRINGTON: The Illinois Central made its track elevation, how long ago, in Chicago?

Mr. JOHNSON: Its first track elevation was in 1892, I think. I remember they had to hurry it up in order to get it ready for the world's fair traffic—to handle that traffic.

Mr. WARRINGTON: What other roads, if any, in Chicago, do a large suburban passenger traffic?

Mr. JOHNSON: The Milwaukee & St. Paul; and the Chicago & Northwestern, I believe, have, though I have no personal knowledge as to that.

1627 Mr. WARRINGTON: Have they elevated their tracks?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: Have they done so for the same reason?

Mr. JOHNSON: No; they have done so in accordance with an ordinance of the City Council and not with reference to suburban travel.

Mr. WARRINGTON: How much of their cost did the city pay?

Mr. JOHNSON: None.

Mr. WARRINGTON: As to none of those roads—none of those elevations?

Mr. JOHNSON: None whatever.

Mr. WARRINGTON: Is it not a fact that those roads you last mentioned, the Milwaukee & St. Paul and the Chicago & Northwestern, have been able to carry their passenger traffic at a much higher speed and more satisfactorily since they changed their tracks?

Mr. JOHNSON: I do not know whether they changed their speed or not.

Mr. WARRINGTON: That stands to reason, don't it?

Mr. JOHNSON: Yes, sir; it stands to reason, but you are asking questions about which I have no personal knowledge in order to answer.

Mr. WARRINGTON: But as an engineer you know that stands to reason.

1628 Mr. JOHNSON: Yes, sir

Mr. WARRINGTON: How many miles have you constructed for the Pennsylvania at Chicago of elevated track?

Mr. JOHNSON: On our line there are about two miles, which we built in 1897.

Mr. WARRINGTON: What do you mean by "our line."

Mr. JOHNSON: I am chief engineer of the Pittsburg, Cincinnati, hicago & St. Louis Railway, and I have no official connection with he Pennsylvania Company.

Mr. WARRINGTON: Then the Pennsylvania Company did some ork there of the same character?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: How many miles did they build?

Mr. JOHNSON: I do not know.

Mr. MATTHEWS: Don't you use the same depot?

Mr. JOHNSON: We use the same depot, but come into it in opposite directions.

Mr. WARRINGTON: Was that depot built before you elevated your racks?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: Was it constructed to receive passengers in the second story?

629 Mr. JOHNSON: No, sir.

Mr. WARRINGTON: Do your passengers go out on the level f the elevated track?

Mr. JOHNSON: No, the track elevation on our line is not in the icinity of the depot. It is further out.

Mr. WARRINGTON: As to these ordinances which you say were assed, you have not a copy of any of them with you, have you?

Mr. JOHNSON: Not with me. I have copies in my office.

Mr. WARRINGTON: Do you know whether or not the railroad ompanies petitioned for the ordinances?

Mr. JOHNSON: I know they did not.

Mr. WARRINGTON: Are you able to run your cars at a higher peed over this elevated track than you ran them over the surface rack?

Mr. JOHNSON: I do not think there is any material difference in he speed—I will amend that. There is a difference too, because he speed before was restricted by ordinance either to eight or ten miles over grade crossings, and we have gotten rid of that restriction.

Mr. WARRINGTON: So you have no restrictions as to speed on you now?

1630 Mr. JOHNSON: Not within the limits of the elevated system.

Mr. WARRINGTON: And that is so as to all of these elevated roads, is it not?

Mr. JOHNSON: That applies to all of them.

Mr. WARRINGTON: Does your freight traffic run over this elevated road?

Mr. JOHNSON: All that goes into the city; we have some delivery yards before we reach it.

Mr. WARRINGTON: Now, there is a belt line at Chicago for transferring freight, is there not?

Mr. JOHNSON: There is a belt line there for the interchange of business with the other lines which do not connect directly.

Mr. WARRINGTON: So your through traffic passes around the elevated track?

Mr. JOHNSON: It does not.

Mr. WARRINGTON: Do you pass over the elevated track?

Mr. JOHNSON: Yes, sir; because our freight yard in Chicago is beyond the elevated track and we cannot get into that yard without going over the elevated track.

Mr. WARRINGTON: Does the Illinois Central carry its freight traffic over its elevated road?

1631 Mr. JOHNSON: I think it does.

Mr. WARRINGTON: All of it?

Mr. JOHNSON: I am not sufficiently familiar with that to say whether all of it goes over it or not.

Mr. WARRINGTON: Certainly a railroad company could avoid passing its through freight over an elevated track, could it not?

Mr. JOHNSON: That depends altogether on situation.

Mr. WARRINGTON: You have constructed a great deal of road on the P. C. C. & St. L. between Pittsburg and Chicago, have you not?

Mr. JOHNSON: We have built some second track and sidings; we have not built any additional lines.

Mr. WARRINGTON: You have built double tracks at intervals; I believe you have double-tracked all of your road from Newark to Pittsburg, have you not?

Mr. JOHNSON: No, sir; not quite.

Mr. WARRINGTON: But you are doing it?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: You have a double track between Newark and Columbus, have you not?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: And west of Columbus you have a series of double track and interlocking switches, so that you run your

1632 train nearly the same as if it were a double track?

Mr. JOHNSON: No, sir; that is done to facilitate train movement.

Mr. WARRINGTON: That is done by having the block system every few miles?

Mr. JOHNSON: The block system is to increase the safety.

Mr. WARRINGTON: You know what I mean. Have you not, between Columbus and Chicago, on your road built sections of double track?

Mr. JOHNSON: We have built passing sidings, which I suppose is what you mean.

Mr. WARRINGTON: Give me the name of what you would call those.

Mr. JOHNSON: Passing sidings.

Mr. WARRINGTON: I suppose there are not two tracks at passing sidings?

Mr. JOHNSON: Yes, sir; of course.

Mr. WARRINGTON: Are they parallel tracks?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: But they could not possibly go by the name of double tracks?

Mr. JOHNSON: No, sir; by double tracks we mean a continuous

stretch of two tracks, side by side, where trains in one direc-
1633 tion use one track, and trains in the other direction use the other track.

Mr. WARRINGTON: Of course that is a broad distinction, I suppose. At the ends of those passing sidings you have a switchman, have you not?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: You have a switchman at each end, do you not?

Mr. JOHNSON: No, sir; we have a towerman rather than a switchman.

Mr. WARRINGTON: What does the towerman do?

Mr. JOHNSON: He is up in the tower and has an operating instrument by which he gets train orders, and he communicates the orders to trains through signals in front of the tower.

Mr. WARRINGTON: Who turns the switches?

Mr. JOHNSON: In some cases the man in the tower turns them, in others he does not.

Mr. WARRINGTON: You have towermen at each end?

Mr. JOHNSON: No, sir; not at each end.

Mr. WARRINGTON: What is the object of having a towerman at the end of these passing sidings?

Mr. JOHNSON: It is really the telegraph office, where the trainmen get their orders; he is really a telegraph operator.

1634 Mr. WARRINGTON: How far apart are those passing sidings?

Mr. JOHNSON: It varies on different divisions.

Mr. WARRINGTON: Could you give it approximately?

Mr. JOHNSON: It varies from five to ten miles.

Mr. WARRINGTON: How long is a passing siding?

Mr. JOHNSON: About 4,000 feet.

Mr. WARRINGTON: By using these towermen at telegraph stations you enable the trains to be operated so as to pass without slowing up much?

Mr. JOHNSON: No, sir.

Mr. WARRINGTON: That could not be, of course. Then there is really no purpose in having the passing siding?

Mr. JOHNSON: Yes, sir; there is.

Mr. WARRINGTON: Tell the Commission what it is for.

Mr. JOHNSON: On a single track you have got to get one train out of the way before another can go by.

Mr. WARRINGTON: Do you mean to tell this Commission that those passing sidings and towers are the old fashioned single track railroad?

Mr. JOHNSON: That is what I mean to say. The only improvement is that they make the sidings with the two ends lapped by each other, so if they have an east bound and an west bound freight
1635 train, both taking siding at the same time to clear a passenger train, those two trains can move out afterwards without interfering with each other. The ends of the siding lap past each other.

Mr. WARRINGTON: Of course the object of that was to obstruct traffic on the road?

Mr. JOHNSON: To obstruct the traffic?

Mr. WARRINGTON: Yes, sir; it was to reduce your facilities I suppose.

Mr. COLSTON: These questions are trifling.

Mr. WARRINGTON: They are not trifling. When a man resists things that I know about I have my idea of his answers.

Mr. JOHNSON: I am not resisting, Mr. Warrington.

Mr. WARRINGTON: You know that that was to improve and facilitate the traffic on that road, was it not?

Mr. JOHNSON: Yes, sir; that is what it was for. You asked me if it was to obstruct traffic.

Mr. WARRINGTON: Now, Mr. Johnson, it is a fact, is it not, that all the railroads are resorting to every means they can for facilitating traffic, in order to move it in the most economical manner?

Mr. JOHNSON: I believe so.

Mr. WARRINGTON: And you have been changing the alignment on your road a great deal, have you not?

1636 Mr. JOHNSON: No, sir.

Mr. WARRINGTON: You have some, have you not?

Mr. JOHNSON: No, sir; not changing alignment. We have been reducing grades.

Mr. WARRINGTON: Have you not been changing the lines at any place?

Mr. JOHNSON: Not on our lines.

Mr. WARRINGTON: And have you not been reducing curves?

Mr. JOHNSON: No, sir.

Mr. WARRINGTON: But the roads have been doing that generally, have they not?

Mr. JOHNSON: I do not think they have generally. Some roads have.

Mr. WARRINGTON: They have been making better grades and better curves, so as to carry greater loades? That has been the purpose and practice, has it not?

Mr. JOHNSON: That is the object of it; yes, sir, to carry larger train loads.

Mr. WARRINGTON: Now, I wish to ask you whether you can carry your figures that you have given here back to 1887. Can you tell me what steel rails were worth in 1887?

Mr. JOHNSON: I have no memorandum of that, but speaking from recollection, I should say it was in the neighborhood of $30.00.

1637 Mr. WARRINGTON: Was it not more? Was it not more than $35.00.

Mr. JOHNSON: I could not speak definitely as to that.

Mr. WARRINGTON: What was the weight of rails—how many pounds?

Mr. JOHNSON: There were different patterns. We bought some at 60 pounds, and some at 70 pounds.

Mr. WARRINGTON: Does that make any difference in cost?

Mr. JOHNSON: Not in the price per ton. It makes a difference in the number of tons that go into the track.

Mr. WARRINGTON: I want to know whether in 1887 steel rails were not as high as they are now?

Mr. JOHNSON: Possibly they may have been; I cannot speak definitely.

Mr. WARRINGTON: Was that not so, also, in 1888?

Mr. JOHNSON: I won't attempt to answer definitely as to that. I have no memorandum of it.

Mr. WARRINGTON: Is that not your best recollection?

Mr. JOHNSON: My best recollection is that rails about that time had gotten down to about the thirty dollar figure, at which they stayed for a series of years. They may not have been down to that figure quite so soon.

1638 Mr. WARRINGTON: Now take the bridge work you have given the figures upon. Are you speaking from what is the average price and the average increase on all bridges?

Mr. JOHNSON: Those figures are the average prices of bridges for which we made contracts and executed the work in the years named.

Mr. WARRINGTON: How much have the prices reduced, or been reduced since January 1 of this year?

Mr. JOHNSON: The price of bridges now would be about 1 cent a pound less than the price quoted there for 1900.

Mr. WARRINGTON: 1 cent a pound less?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: Not more than that?

Mr. JOHNSON: No, sir; about 1 cent a pound. The propositions that I had on some bridge work about two weeks ago were just about 1 cent a pound less than the figures quoted there.

Mr. WARRINGTON: What percentage of reduction would that be on prices in the five or six months in 1900—since January 1?

Mr. JOHNSON: The reduction is really since about April 1, so far as bridge work is concerned.

Mr. WARRINGTON: Now, what percentage of reduction have you had since April 1 of this year?

1639 Mr. JOHNSON: It would amount to about 20 per cent. of the erected work, and about 25 per cent. of the f. o. b. work.

Mr. WARRINGTON: I am asking you the percentage of reduction in bridge work since April 1 of this year, and you say it is 20 per cent. of which class?

Mr. JOHNSON: 20 per cent. of the work erected.

Mr. WARRINGTON: Erected by contractor?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: And 25 per cent. of the work which the company would do itself?

Mr. JOHNSON: 25 per cent. of the work which the contractor delivers on board the cars.

The CHAIRMAN: You mean by that if you build a bridge complete, erected by contract, you can get it done for about 20 per cent. less than when?

Mr. JOHNSON: Than prior to the first of April; that is, these percentage are that much less than the figures which I quoted as our contract prices for 1900.

Mr. WARRINGTON: And you said those contracts were made i December, 1899, and January and February of 1900, did you not
Mr. JOHNSON: Yes, sir; I think possibly some of them run ove into March.
1640 Mr. WARRINGTON: Now take steel rails; as of what tim did you give the price of $33.00?
Mr. JOHNSON: That is our contract price with the Carnegie Ste Company for all rails delivered to us during the year 1900.
Mr. WARRINGTON: When was that contract made?
Mr. JOHNSON: I do not know the exact date, but I think it wa sometime in September last.
Mr. WARRINGTON: What are steel rails worth to-day? I do no mean now under contracts of that kind. What can they be bough for?
Mr. JOHNSON: I have not had occasion to notice the quotations i the papers, and I have no other means of knowing.
Mr. WARRINGTON: Don't you know this, Mr. Johnson: that ste rails have gone down recently?
Mr. JOHNSON: No, I do not. I know that the steel market in ge eral has declined, but I do not know whether rails have followed tha or not.
Mr. WARRINGTON: They would naturally be sympathetic, woul they not?
Mr. JOHNSON: Naturally they would, but it so happens that th rail mills, so far as I know, are still filling old orders, and are no likely to reduce their price quite so quickly.
1641 Mr. WARRINGTON: How much do you understand steel— or what was that phrase that you used as to steel that had bee reduced—"steel market in general"—what do you understand th reduction to be in percentage, and when do you understand it cam down?
Mr. JOHNSON: I do not know that I can answer that in figure It is only through my relation to bridge work that I keep in touc with the steel market.
Mr. WARRINGTON: I wanted your best judgment, from what yo have seen of the steel market generally.
Mr. JOHNSON: I do not know what I can base a judgment on e cept the quotations that I get for bridge work.
Mr. WARRINGTON: The bridges are made of steel, are they not?
Mr. JOHNSON: Yes, sir.
Mr. WARRINGTON: Is it not reasonable to infer that the steel ma ket has gone down about as much, say, quite as much, as the bridges
Mr. JOHNSON: Not quite, because the price when you are reducin the percentage, the percentage would not apply because the price fo a bridge includes the labor done at the bridge shop.
1642 Commissioner FIFER: I think the price of steel rails shown in reports made to the Commission.
Mr. WARRINGTON: That is probably so, and I guess I will leav that subject.
The CHAIRMAN: The average for the year only.

Mr. WARRINGTON: They have put in prices here just for a special time.

Mr. MAXWELL: They are the prices we had to pay this year.

Mr. WARRINGTON: It is not carried all through the year.

Mr. MAXWELL: It covers all the rails we have used this year.

Mr. WARRINGTON: Now, Mr. Johnson, there was a depression in some of the years you have given here; say when you got down to 1897 you struck $17.00 for steel rails.

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: Is this not the truth—that there was a general depression in the country at that time?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: There was?

Mr. JOHNSON: Yes, sir; there had been for a period of three or four years preceding.

1643 Mr. WARRINGTON: There was a falling off of traffic, was there not?

Mr. JOHNSON: Yes, sir.

Mr. WARRINGTON: Well, for some reason, either better seasons or better crops, we had a return of prosperity, when all of the mills became congested and raised their prices, because they could raise them; was that not it? Assuming any cause for it you choose, there was a return of prosperity, when prices went up for a time, and then they reached their summit at about what time, according to your observation?

Mr. JOHNSON: Sometime during the first quarter of this year.

Mr. WARRINGTON: Someone in your company, I believe, said earlier than that; but I am asking your judgment?

Mr. JOHNSON: I understand the question which you are now asking to have reference to the steel market?

Mr. WARRINGTON: You may take the material generally: When do you think we reached the summit?

Mr. JOHNSON: I can judge of that as the matter reaches my attention through affairs in the office; I think somewhere between the close of 1899 and April of 1900.

1644 Mr. WARRINGTON: Take that to be the summit in your judgment; according to your observation it is true, is it not, that we have waves of depression and prosperity, and prices are depressed and raised accordingly? Is that not so?

Mr. JOHNSON: I believe so. I do not know with what regularity those waves come, but there are fluctuations.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: That is all, Mr. Johnson.

Witness excused.

1645 ARCHIBALD FRIES, a witness called on behalf of defendants, being duly sworn, testified as follows:

Mr. COLSTON: Mr. Fries, you are the Assistant General Freight Agent of the Baltimore & Ohio Southwestern Railroad, I believe?

Mr. FRIES: Yes, sir.

Mr. COLSTON: How long have you occupies that position?
Mr. FRIES: Since January 1st, 1899.
Mr. COLSTON: How long have you been in the railroad employment all together?
Mr. FRIES: About twenty years.
Mr. COLSTON: In the railroad business?
Mr. FRIES: Yes, sir.
Mr. COLSTON: Was it all on this railroad?
Mr. FRIES: On the consolidated line of the B. & O. S. W. and the O. & M., and previous to that on the O. & M.
Mr. COLSTON: Where did you carry on the railroad business that you conducted?
Mr. FRIES: Previous to being made Assistant General Freight Agent, I was General Agent of the consolidated lines at
1646 Cincinnati from October 15 to the end of the year 1898. Previous to that time I was Chief Clerk in the General Freight office for a year and a half. Previous to that I was Chief Clerk in the office of a fast freight line operating over the B. & O. S. W. for about six or eight years, and previous to that I was in the local department of the O. & M. Railway.
Mr. COLSTON: Your connection with railroading has always been with the freight department, has it?
Mr. FRIES: Yes, sir.
Mr. COLSTON: In connection with freight traffic?
Mr. FRIES: Yes, sir.
The CHAIRMAN: Do you need to spend any more time on that subject, Mr. Colston?
Mr. COLSTON: I have only one more question. What was the date of the beginning of your railroad employment?
Mr. FRIES: 1880.
Mr. COLSTON: Mr. Fries, I will ask you if you have made a statement of the cost of materials for certain years.
Mr. FRIES: I have.
Mr. COLSTON: I will show it to you to identfy. See if that is the statement.
Mr. FRIES: Yes, sir; that is a statement giving the prices
1647 of coal and material, the gross amounts.

The same is hereto attached and marked Exhibit 43.

Mr. COLSTON: This next statement shows also prices paid for various materials or articles?
Mr. FRIES: Yes, sir.
Mr. COLSTON: We will offer this in evidence.

The same is hereto attached and marked Exhibit 44.

Mr. COLSTON: This first one shows the amount paid for coal for the following years;——
Mr. MATTHEWS: What number?
Mr. COLSTON: Exhibit 43. It shows the amount paid for coal in the operation of this railroad in 1894, 1895, 1896, 1897, 1898,

1899, and 1900. It shows the gross amount paid for coal in each month of each one of these years; does it not?

Mr. FRIES: Yes, sir.

Mr. COLSTON: And also for the months of January, February, and April, 1900?

Mr. FRIES: Yes, sir.

Mr. COLSTON: The Mileage of this road during all this period was the same, was it not?

Mr. FRIES: Yes, sir.

1648 Mr. COLSTON: Have you figured any percentages of increase in consumption of coal in 1899 over 1894?

Mr. FRIES: No, sir: I did not figure that out.

Mr. COLSTON: I will simply state that in 1899 the cost of the coal consumed was $364,245, and in 1894 it was $292,111. The total for only three months given in 1900 was $101,672. Will you explain to the Commission from what sources these figures were taken?

Mr. FRIES: I took them personally from the vouchers of our Purchasing Department.

Mr. COLSTON: Those vouchers show what is actually paid for coal, do they not?

Mr. FRIES: What was actually paid out.

Mr. COLSTON: Well, now, the next sheet of this same Exhibit 43 shows I believe, the prices that you have paid for various articles, with the exception of rails, ties, and coal. Is that correct as shown by the Purchasing Agent's vouchers?

Mr. FRIES: Yes, sir. Coal is given on the other sheet. Rails and ties come under another account, and they could not give me the actual figures.

Mr. COLSTON: This statement is made up on the same basis as the other one?

1649 Mr. FRIES: Yes, sir.

Mr. COLSTON: This is considered in evidence, if your honors please. It is a part of Exhibit 43.

The CHAIRMAN: Let Mr. Warrington look at it. I understand that is a statement of the actual amounts paid, the gross sums paid, for various supplies.

Mr. COLSTON: Yes, sir. I will make a statement of it so that your honors will understand. The amount shown on this second sheet, for other than rails, ties, and coal, in 1894 was $272,600, against $911,705 in 1899, and $251,005 for the three months shown in 1900. In 1898 the amount was $534,906, showing that it almost doubled over that in 1899. This is a part of that Exhibit 43.

Commissioner CLEMENTS: Does it show on that the amount paid for coal per ton?

Mr. COLSTON: No, sir.

Mr. FRIES: The price per ton is shown on another statement.

Mr. COLSTON: This next paper 44, Mr. Fries, shows the price of various articles described on the face of it?

Mr. FRIES: Yes, sir.

Mr. COLSTON: Where did you get these prices from in this paper (referring to Exhibit 44)?

1650 Mr. FRIES: From the vouchers in the Purchasing Agent's office.

Mr. COLSTON: Did you take them off yourself?

Mr. FRIES: Yes, sir.

Mr. COLSTON: We offer this paper.

The same is hereto attached and marked Exhibit 44.

Mr. COLSTON: I will mention some of these articles: Bar iron, wheels, oak lumber, pig iron, car axles, angle bars, spikes, coal, frogs, switches, locomotive tires, steel rails, cross ties, and then another item, which we will come to later, equipment. Bar iron, is given in so much per hundred weight. It begins with the price in 1890 and runs down to March, 1900. The price of bar iron for the year 1890 was $1.80 per cwt., and drops to $1.75 in 1891; then to $1.70 in 1893; $1.15 in 1894; $1.25 in 1895, and finally reaches $2.03 in 1900, in March; the price being in 1899, $2.30 per cwt. 33-inch car wheels: the price is given per wheel, and begins with 1890 with $7.25 per wheel. The lowest price is reached in 1895—$4.60, and the highest price is March, 1900, which is $9.15. The price on oak lumber is given for the same period by years, in per thousand feet. It begins with 1900 at $12.50. The lowest
1651 price on that is reached in 1896—$12.25, and ends in March, 1900, at $15.00. Pig iron, No. 1 charcoal; the lowest price reached in the ten years mentioned is $14.00 in 1898, and the highest price is March, 1900—$23.00. This is given in gross tons. Then the percentage of increase is given on each—on bar iron, refined, 12.7 per cent.; on car wheels 26.2 per cent.; on oak lumber 20 per cent.; on pig iron 48 per cent. increase. These percentages are the increases in 1900 over 1890. I do not think it is worth while to go over all of them.

The CHAIRMAN: I think not.

Mr. FRIES: I would like to make one explanation, about the amounts paid in this about cars. I did not get those prices from the vouchers, but they showed me the contracts between the railroad and the companies showing that those prices were paid.

Mr. COLSTON: The increase in the price paid for car axles in 1900 over 1890 was 54.7 per cent.; angle bars, 22 per cent.; spikes 12.2 per cent. decrease; coal, about which one of your honors asked, begins in 1890 at 90 cents per ton; in 1895 it was 80 cents; in 1899, 85 cents, and now, in 1900, it is $1.07 per ton. Frogs have increased in percentage of cost 18.8 per cent. switches 34.6 per cent.;
1652 locomotive tires 100 per cent.; steel rails 11.6 per cent., and cross ties 31.4 per cent.,

The CHAIRMAN: It is not necessary to take the time to show in detail what these statements are; just put in the statements.

Mr. COLSTON: I will hand the statements in and they will show for themselves. Mr. Fries, you have here the expense of equipment. Did you take those amounts from the actual contracts?

Mr. FRIES: From the contracts for the years 1898 and 1899, and the price for 1900 was from a letter from the car company saying that those prices would rule.

The CHAIRMAN: It having been shown in considerable detail

t changes in prices of material and equipment, etc., have taken
e in the experience of a particular road, it is hardly necessary
go into the same detail with every road. I presume that the
ires in these statements produced by Mr. Fries do not vary
terially from corresponding figures produced by other witnesses
nected with other roads, and I mention this to suggest that it
dly seems necessary to take much time in calling attention to
details of these various statements. You have th-m prepared and
y can be put in.

Mr. MAXWELL: My colleagues have been very indulgent
53 with me and allowed me to take up a great deal of the time in
putting in statements in regard to the Pennsylvania Lines.
The CHAIRMAN: It is a fair presumption that the experience of
e railroad in such matters is the experience practically of all
ads.

Mr. COLSTON: We understand that we get the benefit of that
timony. Mr. Fries, I asked you to make up a statement showing
e loading of cars from Procter & Gamble. Did you make such
compilation?

Mr. FRIES: Yes, sir.

Mr. COLSTON: I will show you this paper and ask you to identify
and explain to the Commission the principal on which it is made
and the result.

The CHAIRMAN: Generally, what does it show?

Mr. FRIES: It shows the cars loaded by the Procter & Gamble Co.
uring the months of November and December, 1899, and January,
ebruary, March and April, 1900, giving the capacity of each car
aded, the total number of cars loaded, and the average capacity of
ie several cars loaded.

Mr. COLSTON: You mean to say the average contents of the several
ars loaded, don't you?

The CHAIRMAN: He said average capacity.

654 Mr. FRIES: The average capacity and the average loading.
There were 230 cars in all loaded during the period men-
ioned, of which 133 cars were of 60,000 pounds capacity, or 57.8 per
ent.; 70 cars were of 50,000 pounds capacity, or 30/4 per cent.; 7
ars were of 80,000 pounds capacity, or 3 per cent.; 1 car was of
5,000 pounds capacity, or 5/10 per cent., and 19 cars were of
0,000 pounds capacity, or 8 3/10 per cent.

Mr. COLSTON: Now, what is the average loading?

The CHAIRMAN: And the average capacity.

Mr. FRIES: 92 per cent. of the cars were 50,000 pounds capacity
and over. The average loading for all of the cars was 36,078 pounds
The average loading for the Procter & Gamble cars, of 50,000
pounds capacity, was 34,608 pounds.

Mr. COLSTON: Is it all on that paper—the average loading?

Mr. FRIES: No, sir; not on that table.

Mr. COLSTON: You calculated it elsewhere?

Mr. FRIES: Yes, sir.

Mr. COLSTON: We offer this.

Hereto attached and marked Exhibit 45.

Mr. COLSTON: I asked you to make out also a statement of the rates on soap under the classification. Did you make out a paper of that kind?

1655 Mr. FRIES: Yes, sir.

Mr. COLSTON: What does it show?

Mr. FRIES: It gives a history of the classification of soap.

Mr. COLSTON: I do not care for that.

Mr. COLSTON: I hand you this paper and ask you to identify it.

Mr. FRIES: This is simply a statement of rates on soap from Cincinnati to various principal points governed by the Official Classification, and some by the Southern Classification, and some by the Western Classification.

Mr. COLSTON: We offer that in evidence.

Mr. FRIES: Carloads and less.

Hereto attached and marked Exhibit 46.

Mr. COLSTON: What is the object of it?

Mr. FRIES: The idea in preparing it was so we would have the figures at hand in computing various estimates.

The CHAIRMAN: Does it show rates at fifth or sixth class figures?

Mr. FRIES: At fifth class figures, the present rates.

The CHAIRMAN: It shows what the rates on soap are from Ivorydale, or Cincinnati, to various places at the present time?

1656 Mr. FRIES: Yes, sir; a comparison of differences under the Official Classification and the Southern shows that rates under the Southern are greater than under the Official.

Mr. COLSTON: Although the Southern puts soap in the sixth class.

Mr. FRIES: It carries commodity rates to many points and sixth class to others.

Mr. COLSTON: And yet the money paid for it is more?

Mr. FRIES: Under a comparison of distances it does.

The CHAIRMAN: That statement shows how those rates compare for corresponding distances?

Mr. FRIES: Yes, sir; I have shown the distances to a number of points where I could get them.

Mr. COLSTON: What is this paper that is headed "rating on Soap under Issues of Official, Southern, and Western Classifications?

Mr. FRIES: That is the paper about which you spoke previoud to the last. It is a record or history of soap under the Official Classification.

Mr. MATTHEWS: That is not offered?

Mr. COLSTON: No, sir.

The CHAIRMAN: Have we that in definite form?

Mr. COLSTON: No, sir; I think not, your honor.

1657 The CHAIRMAN: Let this go in, too, and the witness may tell what it is.

Hereto attached and marked Exhibit 47.

Mr. FRIES: It is a transcript of the classification of soap as taken from the several issues of the Official Classification since its beginning up to the present time. It is also a transcript of the Western

Classification as far back as our office had copies on file; the same is true of the Southern Classification.

Mr. COLSTON: Soap in many of those classifications and for a considerable period was classified as common soap and as toilet and castile, was it not?

Mr. FRIES: Yes, sir.

Mr. COLSTON: They were carried in different classes?

Mr. FRIES: Yes, sir; until June 1st, 1898 in the Official. They are still carried under different ratings in the Western and also in the Southern.

Mr. COLSTON: I hand you this paper and ask you what it is.

(Paper referred to hereto attached and marked Exhibit 48.)

Mr. FRIES: It is a list of some of the principal articles in the fifth class under the present classification, with the prices quoted me personally by representative dealers in those articles at Cincin-
1658 nati.

The CHAIRMAN: Is soap included?

Mr. FRIES: No, sir; I did not give soap, because the other side gave that.

Mr. COLSTON: It is for the sake of comparison with some articles in the fifth class.

The CHAIRMAN: Take some articles you have mentioned.

Mr. FRIES: Dried apples, bi-carbonate of soda, glucose, oils of various kinds, starch, sugar, grape, and sugar, tobacco, fertilizers, turpentine; seed, timothy, red top, orchard grass and blue grass seed; twine, binder; bags, cotton and burlap; coffee, canned fruits and vegetables.

The CHAIRMAN: Those are articles which now take the fifth class rate?

Mr. FRIES: Yes, sir.

The CHAIRMAN: And your statement shows the present prices of those articles in the market as you have ascertained them?

Mr. FRIES: Yes, sir.

The CHAIRMAN: From Wholesale dealers in Cincinnati?

Mr. FRIES: Yes, sir.

Commissioner CLEMENTS: Wholesale prices?

Mr. FRIES: I asked them in every case to give me prices in carload lots.

Mr. COLSTON: Have you a statement or summary of the
1659 average revenue per ton per mile on all the railroads in the United States and also the same thing on the B. & O. S. W. Railroad?

Mr. FRIES: Yes, sir; this is a statement giving the average revenue per ton per mile on all railroads in the United States from the years 1886 to 1898, inclusive, taken from Poor's Manual; also the same thing in regard to the B. & O. S. W. from 1890 to 1898, inclusive—and 1899—I took from our own annual report.

Mr. COLSTON: Well, what is the result of it?

Mr. FRIES: The figures give the average revenue per ton per mile for all roads in the United States, beginning with .7.042 for the year 1886 and reduced to 0.758 for the year 1898.

The CHAIRMAN: It is about 0.725 for 1899.

Mr. FRIES: Yes, sir. For the B. & O. S. W. it shows an average for the year 1890 of 0.83, and for 1899 of 0.527?

Mr. COLSTON: Where did you get those figures from?

Mr. FRIES: From Poor's Manual, except the figures for 1899 for the B. & O. S. W., which I took from the report of our President.

Mr. COLSTON: We offer that in evidence.

Hereto attached and marked Exhibit 49.

1660 Mr. COLSTON: Have you made a compilation of what you might call the distribution of tonnage between classes and commodities?

Mr. FRIES: For our own road?

Mr. COLSTON: Yes, sir.

Mr. FRIES: Yes, sir.

Mr. COLSTON: I will hand you this paper and ask you to state what it is.

Mr. FRIES: This is a transcript of the reports from our railroad to the Interstate Commerce Commission for the years ending June 30, 1897, 1898, and 1899, and also some figures we have computed based on the same.

Mr. COLSTON: What does it show? State in a general way.

Mr. FRIES: It shows for the year 1897 that the commodity rates were 63.62 per cent.

The CHAIRMAN: Commodity traffic?

Mr. FRIES: Commodity traffic; articles taking commodity rates.

The CHAIRMAN: That percentage of the whole?

Mr. FRIES: Yes, sir; and the articles taking class rates were 36.3 per cent. For the year 1898 the articles taking commodity rates were 64.05 per cent. of the whole; and the articlces taking class
1661 rates were 35.95 per cent. of the whole. For the year 1899 they were, respectively, 64.65 and 35.35.

Mr. MAXWELL: Does that statement show the percentage of any sort of traffic in which soap would be included? For instance, does that cover merchandise or miscellaneous articles, or does it show soap?

Mr. *Maxwell:* Soap I assume would be classed either under merchandise or under miscellaneous, in either of which cases we have put them in as taking class rates.

Mr. MAXWELL: What is the percentage of merchandise traffic to the whole?

Mr. FRIES: 12.39 per cent. for 1899; 11.69 for 1898.

Mr. MATTHEWS: What is it for 1897?

Mr. FRIES: 13.17 per cent.; in 1898, 11.69 per cent., and in 1899, 12.39 per cent.

Mr. COLSTON: The expression "merchandise" on that paper covers all the classes of freight?

Mr. FRIES: No, sir I think it does not. There is also "miscellaneous," which would undoubtedly cover some articles.

Mr. COLSTON: What is the difference in percentage between the

classes of freight designated as under classes and commodi-
1662 ties?

Mr. FRIES: The articles taking the commodity rates are double the proportion of the articles taking class rates.

Commissioner CLEMENTS: The miscellaneous and merchandise means class rates, does it not?

Mr. COLSTON: That is to say, merchandise and miscellaneous cover all of the class goods. Is that correct?

Mr. FRIES: No, sir.

The CHAIRMAN: The statement shows that about two-thirds of your traffic was carried at commodity rates?

Mr. FRIES: Yes, sir.

The CHAIRMAN: Is that two-thirds in volume or in revenue?

Mr. FRIES: In volume.

The CHAIRMAN: And the other one-third at class rates?

Mr. FRIES: Yes, sir.

The CHAIRMAN: And part of that one-third was miscellaneous and part merchandise articles.

Mr. FRIES: Yes, sir.

The CHAIRMAN: You do not know whether soap was in the merchandise or miscellaneous articles?

Mr. FRIES: No, sir; but it would be covered by the class rates.

Mr. MAXWELL: Let me call your honors' attention to some of the named articles which come in commodity rates and also in
1663 class rates. You will recall a statement put in on behalf of the Pennsylvania lines; there they made a division showing the exact percentage of commodity articles and the percentage of classified articles, and that covered not only merchandise and miscellaneous articles, but certain named articles, a portion of which were carried at commodity rates and a portion at classified rates.

The CHAIRMAN: That is, the same commodity might be carried at commodity rates partly and partly at class rates.

Mr. FRIES: So far as possible, we took the articles carried at commodity rates and grouped them together.

Commissioner CLEMENTS: Is it not a fact on many of these roads, if not on all of them, that the same article that is in the class rates generally, as between certain stations, or to certain stations, either on the originating road or on some connecting road, it is in the commodity rates?

Mr. FRIES: That is true to a certain extent. As an example, tallow is put in the fifth class in the classification, but between certain points it is carried at commodity rates.

Commissioner CLEMENTS: Each road is at liberty to make a commodity rate?

Mr. FRIES: Yes, sir.

1664 Mr. MAXWELL: Make an illustration between Cincinnati and Louisville.

Mr. FRIES: Soap was taken out of class rates and given a commodity rate to meet the competition of the Ohio River, and the same is true to Memphis and New Orleans, where they meet river competition.

Commissioner CLEMENTS: How do you deal with that in making up your statement? How do you make your calculations to show the percentage?

Mr. FRIES: Take grain; that is almost universally carried at commodity rates. The same is true of flour and other products of agriculture; anthracite coal and bituminous coal; they are all carried on a commodity basis.

Commissioner CLEMENTS: So in that statement all of those things were carried at commodity rates?

Mr. FRIES: Yes, sir.

Commissioner CLEMENTS: Take soap that is carried in class rates. You say to some extent, for instance, between Cincinnati and Louisville it is carried at a commodity rate. How do you make that statement as to that?

Mr. FRIES: We class soap and similar articles of that kind as belonging to the class rates. We do not take the exception; we take the general rule which prevails.

1665 Commissioner CLEMENTS: Well, as I understand it, there are some roads that have about 1300 commodity rates. That was shown some time; if I am noe right about it, I want to be corrected. Many of those were commodity rates in respect to articles which were generally carried at class rates, but in particular instances, between given points, at commodity rates.

Mr. FRIES: That is true.

Commissioner CLEMENTS: So that if you take no note of these exceptions of commodity rates, that would to that extent make your statement incorrect, would it not?

Mr. FRIES: This is a statement of traffic on the B. & O. S. W. with which we are familiar of articles carried under commodity rates and class rates. I could not intelligently make up a statement for another road.

Commissioner CLEMENTS: The same thing applies to your road. You put all of the soap you carried into class rates, notwithstanding you do carry it between certain points at commodity rates.

Mr. FRIES: As regards territory covered by the Official Classification, Louisville, I think, is the single exception on soap.

Commissioner CLEMENTS: But that is only illustrative.

1666 On other articles the same thing would apply, would it not?

Mr. FRIES: The exceptions are few where they are placed in commodity rates.

The CHAIRMAN: I understand your statement to show the percentage of your total tonnage that was actually carried at commodity rates.

Mr. FRIES: Yes, sir; as near as we could compute it.

The CHAIRMAN: And in making that computation you treated soap as always carried at class rates?

Mr. FRIES: Yes, sir.

The CHAIRMAN: Although you did carry some at that time at commodity rates?

Mr. FRIES: Yes, sir.

Commissioner CLEMENTS: And you say that is done with other things put down as class rates?

Mr. FRIES: Yes, sir. As regards this placing of soap in a commodity rat-, it was not placed in a rating which was lower than sixth class. The meaning of commodity rate is that they are placed in a class lower than any class rate.

Mr. MATTHEWS: Don't you carry a great many other articles than soap in commodity rates, a great many other class articles?

Mr. FRIES: Yes, sir.

1667 Mr. MAXWELL: Let me ask a question. If there is any discrepancy in this statement, it is that it does not make the percentage of commodity traffic as large as might be?

Mr. FRIES: The error would be on that side.

Mr. COLSTON: In favor of the other side and against us?

Mr. FRIES: That is my judgment.

Commissioner CLEMENTS: I do not know who it would be against or in favor of, but undoubtedly it would modify the figures.

Mr. MAXWELL: In that statement you have made out, it appears that some of the traffic included is classified traffic that occasionally is carried as commodity traffic. Is there anything, on the contrary, in that statement given as a commodity which is ever carried as a classified article?

Mr. FRIES: No, sir.

Commissioner CLEMENTS: I would like to know about another matter. It has appeared, and does appear, from rate sheets on file in this office and now in evidence, that about the time Classification No. 20 went into effect that there was a pretty general or wholesale withdrawal of commodity rates theretofore in effect; and yet

1668 your statement would indicate that the percentage had not changed between 1898 and 1899. How is that?

Mr. FRIES: Those commodity rates existed during the same years. Some of them existed for ten or more years.

Mr. CLEMENTS: They had existed up to 1899?

Mr. FRIES: 1900.

Commissioner CLEMENTS: You have not got the comparisons for this year at all.

Mr. FRIES: No, sir.

Commissioner CLEMENTS: I was mistaken about it.

The CHAIRMAN: You have given the three years ending June 30, 1899—1897, 1898, and 1899?

Mr. FRIES: Yes, sir.

The CHAIRMAN: And so far as there is any error in your statement, it is, you say, that you have not got as large a percentage carried at commodity rates as the fact was?

Mr. FRIES: That is my judgment.

Commissioner CLEMENTS: Have you examined the fact to see how far that is changed by the withdrawal of commodity rates?

Mr. FRIES: The withdrawal of commodity rates which took place in the months of October, November and December, 1899,

1669 would have the result of throwing a greater number into class rates.

Commissioner CLEMENTS: Do you have any idea to what extent
Mr. FRIES: No, sir; I could not give that.
The CHAIRMAN: If you made a similar statement for 1900 it might show quite a different percentage.
Mr. FRIES: Possibly.
Mr. COLSTON: Here is a statement. Will you state what it is.
Mr. FRIES: It is a statement of the gross earnings, gross expenses and percentage of expenses to earnings for the B. & O. R. R. for the 1891 to 1899, inclusive.

Hereto attached and marked Exhibit 51.

Mr. COLSTON: And the next is a like statement of the B. & O. S. W.?
Mr. FRIES: It is a similar statement for the B. & O. S. W.
Mr. COLSTON: For the same years?
Mr. FRIES: Yes, sir.

Hereto attached and marked Exhibit 52.

Mr. COLSTON: What do they show as to the ratio of ex-
1670 penses to earnings?
Mr. FRIES: The statement for the B. & O. shows the percentage of expenses of operation to earnings in 1891 was 61.69, per cent., and in 1892 it was 76.69 per cent. For the B. & O. S. W. the percentage of expenses to earnings for 1891 was 66.88 per cent. and in 1899 72.97 per cent.
Mr. COLSTON: Mr. Fries, please state what these papers show and the purpose of them.

(Statement referred to hereto attached and marked Exhibit 53.

Mr. FRIES: Exhibit 53 gives a statement of increased revenue on soap traffic for the months of January, February, March, April and May, 1900, showing the average increase per day.
Mr. COLSTON: When you say increased revenue you mean increased revenue to the railroads?
Mr. FRIES: Yes, sir.
Mr. COLSTON: On their Procter & Gamble business?
Mr. FRIES: Yes, sir, based on claims submitted by the Procter & Gamble Company for those months.
Mr. WARRINGTON: That is, for the months of this year named?
Mr. FRIES: Yes, sir; January, February, March, April and May.
1671 Mr. COLSTON: What does it show?
Mr. FRIES: It shows that the amount of increase in revenue on interstate traffic of the C. H. & D., the B. & O. S. W., and the Big Four was $9,178.84.
Mr. MAXWELL: For four months?
Mr. FRIES: For five months. On Ohio traffic for the same period, the same roads, it was $990.97.
The CHAIRMAN: I understand the figures you now produce show the increased revenue of the three roads mentioned for the five months on interstate business?
Mr. FRIES: And on Ohio traffic.

Mr. MAXWELL: Separately shown?

Mr. FRIES: Yes, sir.

Mr. MATTHEWS: What was it in interstate?

Mr. FRIES: $9,178.84; and on Ohio traffic $990.97.

Mr. COLSTON: Does that statement show what the increased cost to Procter & Gamble would be on that traffic, both Ohio and interstate, per box of soap?

Mr. FRIES: No, sir.

Mr. COLSTON: Then it shows it per day—what their increased cost would be per day, does it?

Mr. FRIES: It shows the average increase per day.

1672 The CHAIRMAN: You are speaking about the same exhibit—No. 53?

Mr. FRIES: Yes, sir. It shows the average increase per day based on 30 days per month, or 150 days or five months, of $67.80 per day.

Mr. MAXWELL: That includes the days when they were paying third class, does it?

Mr. FRIES: Yes, sir. Computed on the basis of actual working days, which would also be the actual shipping days, or 130 days for five months, the average increase would be $78.22 per day. The statement also shows the advances made in rates on soap in carload lots from Cincinnati, Ohio, to various points, showing also difference, per cent. of difference and the average advance per box on Lenox and Ivory Soap, and the same computation as regards less than carloads.

Mr. MAXWELL: You have the per box statement there, have you not?

Mr. FRIES: Yes, sir. This second sheet shows the average to Boston, New York, Philadelphia, Baltimore, Buffalo, Pitts-

1673 burg, Albany, Rochester, Cleveland, Toledo, Columbus, Sandusky, Indianapolis, Chicago, East St. Louis and a number of other points in Official Classification Territory. The average on Lenox to the 23 points given is 2.49 cents per box and on Ivory Soap 2.10 cents per box in carloads. In less than carloads to the same points the average would be 2.78 cents per box on Lenox and on Ivory 2.34 cents per box advance.

Mr. COLSTON: This statement shows that taking these statements of the Procter & Gamble Company, filed here by them, the increased cost that they would be subjected to by reason of raising this rate amounts per working day to $78.22?

Mr. FRIES: Yes, sir.

Mr. COLSTON: And that per box of soap it would amount to on an average about 3 cents?

Mr. FRIES: Yes, sir. That is not shown on this first sheet of the Exhibit.

Mr. COLSTON: That is on another sheet?

Mr. FRIES: Yes, sir, on separate sheets of this Exhibit 53.

Mr. MATTHEWS: Have you been testifying as to Exhibit 53?

Mr. FRIES: Yes, sir.

Mr. COLSTON: Please state what this statement shows. I will first have it marked.

[illegible] attached and marked Exhibit 54.

1674 Mr. FRIES: Exhibit 54 gives a series of examples as to the operation of the sixth and fifth class bases on soap via our line to points in the East, West and North. As an example the distance from Ivorydale to East St. Louis, Ill., is 347 miles. Computing this distance at the average rate per ton per mile existing on the various roads during 1898, as shown by Poor's Manual, which is .758, equals $2.63 per ton, or 13.1 per hundred pounds. Sixth class rate, Ivorydale to East St. Louis, 12 cents, less 2 cents I. & M. V. Ry. terminal, leaves 10 cents, or 3.1 cents less than we would be allowed based on the average rate existing. On fifth class——

The CHAIRMAN: Those are the samr sort of figures given the other day for the C. H. & D., are they?

Mr. FRIES: Except they show the different conditions existing by the B. & O. S. W.

The CHAIRMAN: But it is the same class or same kind of statistics.

Mr. FRIES: Yes, sir.

The CHAIRMAN: They don't show the same results exactly.

Mr. FRIES: No, sir.

The CHAIRMAN: The C. H. & D. compared their revenue from soap with their average revenue on all traffic, and you are comparing your revenue on soap with what?

1675 Mr. FRIES: The average rate per ton per mile on all roads. Fifth class from Ivorydale to East St. Louis is 15 cents; less I. & M. V. Ry. terminal of 2 cents leaves 13 cents, or one-tenth of a cent less than we would be allowed based on the average rate. In other words, the rate we have fixed on soap is one-tenth of a cent less in the actual division than we would be allowed if we got the average rate on all roads in the United States.

The CHAIRMAN: Is that not sufficient explanation of that Exhibit?

Mr. COLSTON: There is another fact that we want to bring out.

Mr. FRIES: To New York, the division based on the same computation allows the B. & O. S. W. for 187 miles haul 4.62 cents; the B. & O. for 578 miles haul 12.375 cents; New York terminal 3 cents, for lighterage; I. & M. V. Ry. 1.5 cents terminal for $\frac{5}{8}$ of a mile haul, or very nearly 50 per cent. of what we get for 187 miles.

Mr. COLSTON: Per hundred pounds?

Mr. FRIES: Per hundred pounds. To Pittsburg it shows a division, to the B. & O. S. W. for 38 miles act*ua*l haul 1.4 cents; B. & O. 9.1 cents and I. & M. V. terminal for $\frac{5}{8}$ miles $1\frac{1}{2}$ cents, or more than we get for 38 miles haul. That is on the basis of sixth

1676 class rate. On basis of the fifth class rate, at which soap is now computed, the B. & O. S. W. gets 1 8/10 cents for 38 miles; the B. & O. gets 11.7 cents and the I. & M. V. terminal is 1.5/10 cents per hundred pounds. Take Columbus, Ohio, the division gives the B. & O. S. W., for 38 miles haul, on sixth class basis, 2/3 cents per hundred pounds; the B. & O. for 71 miles 3.7 cents; and the I. & M. V. terminal for $\frac{5}{8}$ of a mile, 2 cents. On fifth class basis the division gives the B. & O. S. W., for 38 miles, 2.9 cents; B. & O. 4.6 cents; I. & M. V. terminal, 2 cents.

Mr. COLSTON: That is t*i* illustrate, and does illustrate what whr

Procter & Gamble railroad gets for five-eighths of a mile in proportion to the longer haul of other railroads?

Mr. FRIES: Yes, sir; also to show the actual revenue we get for hauling soap.

The CHAIRMAN: That is Exhibit 54?

Mr. FRIES: Yes, sir.

Mr. COLSTON: We will offer this statement. I will hand it to you and ask you to state what it shows.

Hereto attached and marked Exhibit 55.

Mr. FRIES: To make up Exhibit 55 we took the figures submitted in the claims by the Procter & Gamble Company against these three roads for one month and figured up the tonnage; and com-
1677 puted the average advance per box, which on the C. C. C. & St. L. and the C. H. & D. is 2.96 per box for the month of May. I do not give a separate computation for lenox and Ivory. The effect on all boxes of soap over the Big Four and the C. H. & D. for that month was 2.96 cents per box and over the B. & O. S. W. 3.16 cents.

Mr. COLSTON: About that statement which you submitted showing that $78.22 a day was the increased cost to Procter & Gamble Company on the traffic represented by the statements that they submitted here, state whether that includes any other roads than the Big Four, the Baltimore & Ohio Southwestern, and the C. H. & D.

Mr. FRIES: It does not.

Mr. COLSTON: It only includes traffic by these three roads?

Mr. FRIES: Yes, sir.

The CHAIRMAN: These computations are made on the three exhibits filed by the complainant?

Mr. FRIES: Yes, sir.

The CHAIRMAN: Which purport to show how much more they have paid out under the present classification than they would
1678 have paid if the classification had not been changed?

Mr. COLSTON: Yes, sir; that is it exactly.

Mr. MATTHEWS: Doesn't it include the Erie?

Mr. FRIES: You didn't make any claim against the Erie.

The CHAIRMAN: Your deductions are made from the statements submitted by the complainant?

Mr. FRIES: Yes, sir.

The CHAIRMAN: We will take a recess until 2.15 o'clock.

At 12.50 p. m. a recess was taken.

1679 After Recess.

2:15 O'CLOCK P. M.

The CHAIRMAN: Proceed, gentlemen.

ARCHIBALD FRIES resumed the stand.

Mr. COLSTON: I wanted to ask you about switching charges at Cincinnati. Do you know what charge is made by the Baltimore & Ohio Southwestern for switching for the Cincinnati Southern Railroad at Cincinnati?

Mr. FRIES: Yes, sir.

Mr. COLSTON: How much is it?

Mr. FRIES: We have two charges——

Mr. WARRINGTON: I object. If this witness is a qualified witness to speak on the subject, why, that is one thing.

The CHAIRMAN: He says he knows.

Mr. WARRINGTON: Well, all right.

Mr. FRIES: We have two switching charges, one covering freight which we receive from the Cincinnati Southern at Eighth Street and delivery to the Cincinnati Street connection track. For that service we charge $1.40 per car. The other service covers cars delivered to us by the Cincinnati Southern at Eighth Street and which we
1680 deliver to their Mill Street depot, for which we charge 55 cents per car.

Mr. COLSTON: What is the difference in the length of haul that the B. & O. S. W. performs for the Cincinnati Southern for which they receive 55 cents a car being the distance from Eighth Street to the Mill Street depot?

Mr. FRIES: The difference in haul is about one square.

Mr. COLSTON: I did not mean the difference, I mean the distance. What is the distance over which the cars are moved for which the 55 cents per car is paid.

Mr. FRIES: About a mile and a quarter.

Mr. COLSTON: What is the distance over which the cars are moved for which $1.40 is charged?

Mr. FRIES: It is, I think, one square further.

Mr. COLSTON: The delivery in one case is to the connection track?

Mr. FRIES: Yes, sir.

Mr. COLSTON: And the delivery in the other case is to the freight depot used by the Cincinnati Southern Railway?

Mr. FRIES: Yes, sir; and which depot is owned by the B. & O. S. W. and leased to the Cincinnati Southern.

1681 Mr. COLSTON: Is the movement of cars to the Mill Street depot, for which you receive 55 cents a car, greater as to the number of cars than the movement of cars from Eighth Street to the street connection track, or is less?

Mr. FRIES: I think it is greater, but I have no figures to show definitely. I have made no computation.

Mr. COLSTON: At this Mill Street depot all freight which is brought into Cincinnati for Cincinnati points and all freight that is started from Cincinnati for points on the Cincinnati Southern Railway comes to and starts from it.

Mr. FRIES: It is their receiving and delivering depot for down town freight.

Mr. COLSTON: I believe that is all.

Mr. MAXWELL: I wanted to ask you, Mr. Fries, if you know whether the class rates have been increased or decreased from the time of the first official classification in 1887 up to the present time?

Mr. FRIES: The class rates in the territory covered by the Official Classification have in no instance been decreased. To certain points in Central Freight Association territory and to some of the termini

the class rates have been advanced, but there has been no de-
82 . crease during the period from 1887 to date.

Mr. MAXWELL: Have you made a statement of various
ss rates from Cincinnati to the principal points?

Mr. FRIES: I have.

Mr. MAXWELL: (Producing paper) I believe that is it?

Mr. FRIES: Yes, sir.

Mr. MAXWELL: Tell the Commission what that shows.

Mr. FRIES: It gives the class rates existing at the time the Official
assification was instituted in 1887 from Cincinnati to various points
rth, east, south, and west, as, also, the class rates to the same points
vered by the Official Classification which exist today. The rates
e the same to Boston, New York, Philadelphia, Baltimore, Albany,
chester, Louisville, Peoria, and East St. Louis, and have been
vanced to Buffalo, Pittsburg, Youngstown, Cleveland, Detroit, To-
lo, Zanesville, Columbus, Grand Rapids, Sandusky, Saginaw, In-
anapolis, Chicago, and Cairo.

Mr. MAXWELL: And that statement shows when the advance was
ade and the amount of the advance.

Mr. FRIES: It shows the amount of the advance, but not the date
was made.

Mr. MAXWELL: And where nothing is put opposite 1900
83 what does that indicate?

Mr. FRIES: It means the rates are the same.

Mr. MAXWELL: And where there is any change it is indicated
posite the figure 1900?

Mr. FRIES: Yes, sir.

Mr. FRIES: We will offer that.

The same is hereto annexed and marked Exhibit No. 56—Fries.

Mr. MAXWELL: That is all.

Mr. COLSTON: You may cross examine.

Cross-examination:

Mr. WARRINGTON: Did you have access to the prices of coal from
887 to 1893?

Mr. FRIES: I had access to the prices of coal for the years 1890,
891, 1892, and 1893, but not for years previous to that.

Mr. WARRINGTON: Why could you not gain access to the prices,
y six or seven years back of the time you gave them?

Mr. FRIES: Our purchasing department explained that they had
ot kept the records for that period and could not give me the
gures.

Mr. WARRINGTON: They were easily obtainable elsewhere,
684 were they not?

Mr. FRIES: They said not. They said the figures from the
eginning of the year 1890 were the only ones they could give me.

Mr. WARRINGTON: Why did you not give them from 1890 to
893 both inclusive?

Mr. FRIES: I did.

Mr. WARRINGTON: No, I think you begin with 1894, do you not?

Mr. FRIES: Not on coal. My recollection is——

Mr. WARRINGTON: (Reading from Exhibit) "Purchasing Agent's vouchers for coal."

Mr. FRIES: Oh! that is the total amount paid out for coal. The other is the price paid for coal. The total amounts begin with the year 1894. Our purchasing agents stated that they had not kept the total amount paid out for coal and they could not give me the figures for that year.

Mr. COLSTON: Right here, before I forget, I want to say that in 1893 the part of the road from Cincinnati to Parkersburg was consolidated with that from Cincinnati to East St. Louis. Therefore, of course there would be no opportunity for comparison; the length of the road would be only about one-half.

1685 Mr. WARRINGTON: You could easily tell if you had rates per ton that is given in the statement.

Mr. FRIES: Back of what time?

Mr. WARRINGTON: 1890.

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: But not farther back?

Mr. FRIES: No, sir.

Mr. WARRINGTON: Well, I do not find it on No. 43.

Mr. FRIES: Look on No. 44.

Mr. WARRINGTON: Well, I will come to that. Why did you not give the quantities purchased for the years you do disclose on Exhibit No. 43?

Mr. FRIES: In explanation of that I would state that the quantities were kept in a different way. They are kept for the fiscal year. I have the number of tons for each fiscal year ending June 30 for six years.

Mr. WARRINGTON: Well, they do not appear on Exhibit No. 43.

Mr. FRIES: No.

Mr. WARRINGTON: Now, in the second sheet of Exhibit No. 43—were you doing any special work in 1899? Was your Company?

1686 Mr. FRIES: What do you mean by "special work"?

Mr. WARRINGTON: Well, that would increase your expenses.

Mr. FRIES: In 1899 we did considerable construction work, reconstructing the line of road.

Mr. WARRINGTON: What do you mean by that?

Mr. FRIES: Well, a great many curves were taken out; the lines were straightened. In one case, I believe, they took out the top of a tunnel and another they bought up a new right of way and shortened the line.

Mr. WARRINGTON: Go on and tell all about it.

Mr. FRIES: They also put in new bridges, heavier steel rails, new ballast—do you want to know about equipment also?

Mr. WARRINGTON: I want you first to explain about the construction.

Mr. MATTHEWS: There were a good many new ties, were there not?

Mr. FRIES: A good many new ties.

Mr. WARRINGTON: How much, if you know, was expended on improving the road?

Mr. FRIES: I have not the figures.

Mr. WARRINGTON: What did you do about your bridges?

1687 Mr. FRIES: I do not understand what you mean.

Mr. WARRINGTON: Did you do any work on your bridges at the time you were doing this other work on the road bed?

Mr. FRIES: That was my understanding.

Mr. WARRINGTON: Have you told us about that?

Mr. FRIES: I said they put in some new bridges.

Mr. WARRINGTON: You practically reconstructed your road in 1899.

Mr. FRIES: Part of it.

Mr. WARRINGTON: What was the occasion for that?

Mr. FRIES: Well, the heavier motive power that we are now using requires heavier steel rails and bridges that would support greater weights; so much as regards the new ballast, rails and bridges.

Mr. WARRINGTON: Then the work on the road bed and bridges was to accom-odate a heavier equipment.

Mr. FRIES: That is my understanding.

Mr. WARRINGTON: Well, what about the heavier equipment. What did you do in that respect?

Mr. FRIES: We purchased 55 new locomotives in the years 1898 and 1899, all of which were of a heavier build than those previously operated.

1688 Mr. WARRINGTON: What else in the way of equipment?

Mr. FRIES: We purchased in the neighborhood of 3,000 box cars and 250 steel gondolas of 80,000 capacity.

Mr. WARRINGTON: What else?

Mr. FRIES: (Consulting memorandum.) The exact figures during the year 1898——

Mr. WARRINGTON: I do not ask you for the exact figures. I want to get the others.

Mr. FRIES: Those are practically all.

Mr. WARRINGTON: What was the object of getting that equipment?

Mr. FRIES: To carry the freight we secured in our own cars and thereby avoid paying mileage for the use of freight cars.

Mr. WARRINGTON: Was that all?

Mr. FRIES: That was the principal reason.

Mr. WARRINGTON: Were they any heavier than the foreign cars you had been using?

Mr. FRIES: All cars purchased at the present time are of a heavier capacity.

Mr. WARRINGTON: Were the locomotives any heavier than those you had been using before?

1689 Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Why did you get a heavier equipment —what was your object?

Mr. FRIES: To be able to carry heavier loads and thereby increase the train capacity.

Mr. WARRINGTON: Well, the object of that was to economize in the carriage of freight, was not that so?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: How much did you increase in tons per mile, or per train, which ever way you kept it, over and above what your trainloads were before?

Mr. FRIES: I have not the figures to answer that question.

Mr. WARRINGTON: You did not bring them with you?

Mr. FRIES: No, sir.

Mr. WARRINGTON: You have them at your office?

Mr. FRIES: In our President's Report for 1899, he gives the figures, according to my recollection.

Mr. WARRINGTON: Do you know whether that you have just stated has been given to the Interstate Commerce Commission?

Mr. FRIES: I presume so. I do not know.

1690 Mr. WARRINGTON: Then you know where the figures can be obtained. You cannot state from recollection what the increase was? Could you give it in percentage?

Mr. FRIES: No, I have nothing to do with making up those statistics.

Mr. WARRINGTON: I notice in the second sheet of this Exhibit No. 43 there is quite a sharp increase in 1899 over 1898, if I follow this rightly; for instance, $534,906 in 1898 and $911,705 in 1899. Was any of this due to construction or reconstruction?

Mr. FRIES: I am not able to answer that question.

Mr. WARRINGTON: Well, that would be an important fact to know, would it not, when you come to estimate the value of the second sheet of Exhibit No. 43?

Mr. FRIES: I can state what our purchasing agent said to me.

Mr. WARRINGTON: No, I do not ask you for that. I want to know what you know. You do not know anything of your own knowledge?

Mr. FRIES: Not of my personal knowledge.

Mr. WARRINGTON: Now, are you able to tell me of your own knowledge?

1691 Mr. MAXWELL: Is that the item of coal, Mr. Warrington?

Mr. WARRINGTON: Rails, ties, and coal.

Mr. MAXWELL: "Other than rails, ties, and coal."

Mr. WARRINGTON: Yes, it is the purchasing agent's vouchers "other than for rails, ties, and coal." You could not aid me in the column for 1898 in that respect I have mentioned of your own knowledge?

Mr. FRIES: No, sir.

Mr. WARRINGTON: Or for 1897.

Mr. FRIES: I could not.

Mr. WARRINGTON: Or any of the years you have given?

Mr. FRIES: Not in that respect.

The CHAIRMAN: Would it disturb you, Mr. Warrington, for me to ask a question?

Mr. WARRINGTON: No, sir.

The CHAIRMAN: Mr. Fries, one of your statements shows the percentage of expenses to receipts for a series of years, does it not?

Mr. FRIES: Yes, sir.

The CHAIRMAN: And it appears by that statement that the percentage for 1899 is very much greater than any previous year, does it not?

1692 Mr. FRIES: Yes, sir.

The CHAIRMAN: How do you explain that? Did these unusual and extraordinary expenses go into the expense account for that year and occasion that increase in the percentage, or some part of it?

Mr. FRIES: I do not understand that they did.

The CHAIRMAN: Then, how do you explain that great increase in the percentage of expenses to receipts for the year 1899?

Mr. FRIES: From the fact that every material that goes into the maintenance of our line and equipment has been very materially advanced.

Mr. MAXWELL: If your Honors will look at the statement you will see that there is no more increase in the ratio between those two years and any previous years.

The CHAIRMAN: I was under the impression that there was.

Mr. MAXWELL: From 1895 to 1896 it was from 63.53 to 66.40; from 1896 to 1897, it was about the same; from 66.40 to 69.34; from 1897 to 1898, it was less than 2 per cent., from 69.34 to 71.21; and from 1898 to 1899, an advance of less than 2 per cent. The advance that year was less than in the previous year. The

1693 advance the last year was the smallest of any there was.

The CHAIRMAN: It is your understanding that these unusual and extraordinary expenses by which a portion of the road was practically reconstructed and important additions made to the rolling stock and equipment, were not taken into account in fixing the percentage of expenses to receipts for 1899?

Mr. FRIES: That is my understanding.

Mr. COLSTON: May I state right here that it is a well known fact, and I will put it in evidence that there was $5,500,000 of bonds issued for the purpose of reducing grade and supplying equipment to this railroad company. That appears in the Report of the railroad company and my friend on the other side understands it very well.

The CHAIRMAN: That will undoubtedly be shown by the Report to the Commission.

Mr. WARRINGTON: Well, while on this Exhibit No. 52 to which the Court has called attention, how many of the years covered by that was that road in the hands of a receiver?

Mr. FRIES: I cannot answer that.

Mr. WARRINGTON: Why?

Mr. FRIES: The changes of the B. & O. S. W. have been

1694 so many that I cannot, from memory, give you the number of them.

Mr. WARRINGTON: Well, when did it last go into the hands of a receiver and when was it taken out?

Mr. FRIES: I think on or about Jan. 1, 1900, and it was taken out on or about August 1 of the same year. That is just merely my recollection.

Mr. WARRINGTON: Now, then, the period you are giving the ratio for, 72 plus, for operating expenses covered this receivership term, did it?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Well, Mr. Fries, then, is it true that you carried all the expenses of the receivership into the expenses of that year?

Mr. FRIES: I cannot say

Mr. WARRINGTON: Well, you do not know any other place they went?

Mr. FRIES: I do not know.

Mr. WARRINGTON: Well, how is it you bring those papers here if you are not able to explain what goes into them?

Mr. FRIES: I can only explain as regards the traffic part of
1695 them.

Mr. WARRINGTON: Now, let us see about the traffic part of them. Did you get those figures from Poor's Manual?

Mr. FRIES: I did.

Mr. WARRINGTON: When you look at Poor's Manual do you not find that you carry both passenger and freight traffic into that?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Then, that does not give you any idea of the freight business, does it? I am now speaking of Exhibit No. 52. You cannot tell anything from that Exhibit No. 52 about your freight traffic, can you?

Mr. FRIES: Not specifically regarding freight?

Mr. WARRINGTON: Then, what does that Exhibit do in this case? What is it for, according to your understanding?

Mr. FRIES: It shows that the total expenses for operating, both passenger and freight, have increased in percentage ratio when compared with the gross earnings from passenger and freight traffic.

Mr. WARRINGTON: How does that help this controversy seeing that you cannot——

Mr. MAXWELL: Is not that for the lawyers to discuss?

1696 Mr. WARRINGTON: I am trying to discuss it with somebody that knows. Now, Mr. Fries, is not this a fact that no part of the Exhibit No. 52 shows the effect upon your road of the change from the old and lighter equipment to the new and heavier equipment?

Mr. FRIES: I do not understand your question.

Mr. WARRINGTON: I will put it this way: Does not Exhibit No. 52 relate to a time or to times when your company was using the lighter equipment and before it made the changes in its road bed?

Mr. FRIES: Partly, yes, sir.

Mr. WARRINGTON: Why is it not absolutely?

Mr. FRIES: Because we had used the larger equipment and larger motive power for a portion of the time.

Mr. WARRINGTON: Well, what portion.

Mr. FRIES: I cannot give you the exact date of the purchases.

Mr. WARRINGTON: Now, I wish to ask you another thing: Were you not operating your road under disadvantages while you were changing the road bed to meet the weight and necessities of the new equipment which you were contemplating?

Mr. FRIES: In a measure, yes, sir.

1697 Mr. WARRINGTON: Well, that would reflect itself in Exhibit No. 52, would it not?

Mr. FRIES: The disadvantages that I state are of the nature that because of having a large number of construction trains at work on the line of road it was more difficult to get our trains over the road on time and to the avoiding of accidents.

Mr. WARRINGTON: Would not that tend to increase your expenses? In other words, you would not intend to testify that you could operate a road economically which was in process of change from a lighter equipment, etc., to a heavier one—you could not operate that as cheaply, I repeat, as you could when you were not interfered with by such work?

Mr. FRIES: That is perhaps true, but I am not qualified to state definitely.

Mr. WARRINGTON: Now, I wish to look at your Exhibit No. 44 for a moment. You only give prices on that Exhibit I believe. You do not give quantities anywhere?

Mr. FRIES: No, sir.

Mr. WARRINGTON: Your purchasing agent is the man who makes the contracts to purchase?

Mr. FRIES: For those materials, yes, sir.

1698 Mr. WARRINGTON: Is he a man who is familiar with a subject of this kind?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: You do not pretend to be.

Mr. FRIES: I know that those prices were actually paid for the material.

Mr. WARRINGTON: I understand; but you only know that these figures are correctly copied?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: You do not pretend to have knowledge of the values of materials?

Mr. FRIES: No, sir.

Mr. WARRINGTON: Now, would it not help us if we had the quantities to see what effect these prices had?

Mr. FRIES: I tried to get the quantities of each material, but found that it would take so long to make up the statement that I did not have the time before I was called to Washington.

Mr. WARRINGTON: Now, referring to the second sheet of the same Exhibit No. 44: You cannot help me any about steel rails and cross ties, except that you know the figures are copied on here. That is all you know about that?

1699 Mr. FRIES: What do you mean "that I cannot help you?"

Mr. WARRINGTON: Do you know anything about rails, the cost in 1899?

Mr. FRIES: No, sir.
Mr. WARRINGTON: In 1890?
Mr. FRIES: No, sir.
Mr. WARRINGTON: In 1891?
Mr. FRIES: No, sir.
Mr. WARRINGTON: The reason is that nobody wrote them down there for you?
Mr. FRIES: No, sir; we did not buy any in those years.
Mr. WARRINGTON: You do not know what they were in 1887 and 1888?
Mr. FRIES: No, sir.
Mr. WARRINGTON: Now, I will ask you whether the cross ties which are employed to carry the heavier rails that you put down are not a larger and heavier tie than the cross ties that were used for your lighter rail and lighter equipment?
Mr. FRIES: My understanding is that they are not, but I cannot definitely state that fact.

1700 Mr. WARRINGTON: Now, Exhibit No. 45: What you intended to show here by Exhibit No. 45, if I understand, is the average weight of loads which were put in cars containing Procter and Gamble's soap?
Mr. FRIES: Yes, sir.
Mr. WARRINGTON: Did you make any of the weights?
Mr. FRIES: How do you mean?
Mr. WARRINGTON: Did you weigh any of the loads?
Mr. FRIES: No, sir.
Mr. WARRINGTON: Did you examine any of the cars?
Mr. FRIES: No, sir.
Mr. WARRINGTON: Then, again, you have statements here that somebody else has given you?
Mr. FRIES: The statements were compiled under my personal direction and derived from tissue copies of the billing from which the revenue on the weights were taken.
Mr. WARRINGTON: Did you compile at the same time any loads of other articles than soap so as to be able to tell me what the comparison was?
Mr. FRIES: I did not compile any statement of that sort.
Mr. WARRINGTON: Are you able from any statements or records you have here to state what the average tonnage per car is on your line?

1701 Mr. FRIES: For the year 1899 the average tonnage was 15 tons. That is my recollection.
Mr. WARRINGTON: Did that relate to carloads only.
Mr. FRIES: My understanding is that that covers all freight, carloads and less.
Mr. WARRINGTON: Then, when you take less than carload quantities you take what we are calling mixed freights or mixed articles, do you not? For instance, if I were to put a ton of my goods on and A were to put another ton and B 5 tons and so on, you would call that a mixed car load lot?
Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Well, you think that that class is included in the estimate that produces an average of 15 tons?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: And that relates to all of your freight?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: What did you say was the average you got from us?

Mr. FRIES: On all cars 36,078.

Mr. WARRINGTON: That is the average. I see you have it here, 36,078. (Referring to Exhibit.)

Mr. FRIES: Yes, sir.

1702 Mr. WARRINGTON: Where is the Exhibit by which you sought to show the distribution of commodities? Do you remember the number of that Exhibit, Mr. Maxwell?

Mr. MAXWELL: That was Exhibit No. 50, I think.

Mr. WARRINGTON: I wish in connection with Exhibit No. 45 to ask you a question or two in regard to Exhibit No. 50.

Mr. FRIES: What is Exhibit No. 45?

Mr. WARRINGTON: That is average loading.

Mr. COLSTON: By Procter and Gamble?

Mr. WARRINGTON: Do any of the articles move at a commodity rate in less than carload lots?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: What?

Mr. FRIES: Flour moves in less than car load lots.

Mr. WARRINGTON: Anything else?

Mr. FRIES: Starch.

Mr. WARRINGTON: Anything else?

Mr. FRIES: Well, some grain to a limited extent; very little.

Mr. WARRINGTON: Can you think of anything else?

Mr. FRIES: Will you let me see the list of commodities?

The list was handed to the witness.

Mr. FRIES: (Referring to list.) Tobacco—well, that is not
1703 a commodity.

Mr. WARRINGTON: I am asking about the commodities.

Mr. FRIES: There may be a few other mill products that move in less than carload lots. That is about all I would say.

Mr. WARRINGTON: Are they included in Exhibit No. 50? Are these less than carload lots included in Exhibit No. 50?

Mr. FRIES: Yes.

Mr. WARRINGTON: Do you know how much of the total percentage shown in this Exhibit went in less than carload lots?

Mr. FRIES: I could not say, but I would state that when those articles move in less than carload lots they move on a class basis and not on a commodity basis.

Mr. WARRINGTON: Then, this statement you have uses all the commid-ties for bulk or volume, whereas for the less than carload lots you get class rates. That is true, is it, of your Exhibit?

Mr. FRIES: That is true, but the amount is so small that it would be almost infinitesimal when compared.

Mr. WARRINGTON: Tell me why you put in a less than carload lot at all if you got class rates. Was the very object of putting
1704 in commodities to show why the average rates came down?

Mr. FRIES: It has been explained that we prepared that statement from the figures submitted in the Report to the Interstate Commerce Commission and we had not the necessary figures to enable us to separate such less than carloads lots from the others.

Mr. WARRINGTON: Now, then, if I understand you the articles mentioned on the second and third sheets of Exhibit No. 50, and, indeed, on all the sheets of that Exhibit, move in less than carload lots in quantities so small that it is not worth while to take any account of them?

Mr. FRIES: No, sir, I did not say that.

Mr. WARRINGTON: Well, those that go at commodity rates.

Mr. FRIES: I said that of the articles that are shown in that statement as taking commodity rates, there is a small movement of three or four, such as grain, flour, or mill products in less than carload lots when they take the class rates.

Mr. COLSTON: They are not commodities at all, then, are they?

Mr. FRIES: They are not commodities.

Mr. WARRINGTON: That is so small they do not amount to anything?

1705 Mr. FRIES: They do not amount to anything as regards those commodities.

Mr. WARRINGTON: Then, packing house products do not move in less than carload lots. Is not that the result of your statement or one of the results?

Mr. FRIES: Packing house products are included under the head of class rates.

Mr. WARRINGTON: If the articles mentioned in Exhibit No. 50, which go in less than carload lots, are so small that you need not take account of them, packing house products belong to that category?

Mr. FRIES: I did not say that.

Mr. WARRINGTON: Are not packing house products here?

Mr. FRIES: I stated that the amount of the commodities—grain, flour, and mill products that move in less than carload lots is so small that it would cut no figure in the computation of that statement. The other commodities, I think, move exclusively in carload lots. Packing house products are not included under commodity rates in that statement.

Mr. WARRINGTON: Do they not have commodity rates?

Mr. FRIES: No, sir; not at the present time.

1706 Mr. WARRINGTON: Not at the present time, of course; but did they not have?

Mr. FRIES: They have at times been taken out of the class basis and given a commodity basis, but it was never less than the sixth class basis.

Mr. WARRINGTON: What was the object of putting them into the commodity category?

Mr. FRIES: It resulted from cutting rates and issuing a tariff to cover the cut rate basis.

Mr. WARRINGTON: Do you regard starch as a grain product?

Mr. FRIES: Yes, sir; it is so regarded.

Mr. WARRINGTON: Does it move in less than carload lots?

Mr. FRIES: I think it does to a limited extent.

Mr. WARRINGTON: And it is so limited that it is not worth mentioning.

Mr. FRIES: I would say that it would cut no figure in the figures.

Mr. WARRINGTON: Exhibit No. 47: One thing to be observed on that, which purports to be a rating on soap under issues of the Official, Southern, and Central Classifications, is that you pay no attention to period during the life of the Interstate Commerce Commission to net weights and the practice in that regard touching soap.

1707 Mr. FRIES: That is correct.

Mr. WARRINGTON: Well, now, when you give these classifications of soap you give what appears on the instruments themselves and nothing else?

Mr. FRIES: I give the legal standing as regards classification of soap for the period covered by the statement.

Mr. WARRINGTON: What do you mean by "the legal standing"?

Mr. FRIES: As authorized by the Official Classification.

Mr. WARRINGTON: Well, if the net weight practice operated to lower soap a class and that was carried on for a number of years it would make some difference in the statement you have here, would it not?

Mr. FRIES: Not in the statement. It would make a difference in the rates the same as concessions in the rates would do.

Mr. COLSTON: That is just a reproduction from the classification for a matter of convenience, Mr. Warrington, that is all that is.

Mr. WARRINGTON: Now, take No. 46: I do not know that I understand Exhibit No. 46. What rates do you give for the distances there mentioned?

1708 Mr. FRIES: The rates are the present, current rates.

Mr. WARRINGTON: In the territory covered by your road?

Mr. FRIES: Not only by our road, but all the roads in the Official Classification.

Mr. WARRINGTON: Well, now, Mr. Fries, when you give rates in territory other than Official in comparison with rates charged in the Official territory, what are you expecting to show by that? What is your idea of that? Do you claim that the roads in the West in a sparsely settled country and in the South should carry as low rates in the Official territory—is that your idea?

Mr. FRIES: I do not claim anything. The statement was made merely to show that while the Southern Classification shows the rating of soap in sixth class, that the sixth class rate for a corresponding distance to that in the Official Classification territory was greater.

Mr. WARRINGTON: Well, is not that ignoring the difference in the kind of territory through which the roads pass when you are comparing the Official Classification territory with the Southern or with the Western.

Mr. COLSTON: I just wanted to illustrate the fact. He does not say anything about the propriety——

1709 Mr. WARRINGTON: I am asking him.

Mr. FRIES: The question of population in the different territories was not taken into account.

Mr. WARRINGTON: Is it not your understanding that a road which passes through a thickly populated country can afford to carry at less rates than one that passes through a sparsely populated country?

Mr. FRIES: As a general proposition I believe that is true.

Mr. WARRINGTON: Well, then, you do not mean by this to show anything affecting classification or relativity of articles when you show prices in different parts of the country, do you?

Mr. FRIES: It is merely to show the existing facts as between the two classifications.

Mr. WARRINGTON: That is all you can say about it?

Mr. FRIES: I might state that there is considerable country governed by the Official Classification as sparsely settled as that governed by the Southern Classification.

Mr. WARRINGTON: But you take the whole territory into consideration there is no comparison?

Mr. FRIES: I have not made any comparison.

1710 Mr. WARRINGTON: You cannot help me on that?

Mr. FRIES: No, sir.

Mr. WARRINGTON: That it comes back to this: All you could do was to find the rates down there on sixth class articles——

Mr. FRIES: Not on sixth class articles. On soap.

Mr. WARRINGTON: Well, on soap. It is sixth class down there?

Mr. FRIES: Not to all points. To Memphis, New Orleans and points governed by water competition the commodity basis governs.

Mr. WARRINGTON: Now, turn to your Exhibit No. 53, which speaks of increases of revenue in interstate and Ohio soap traffic. What I would like for you to do in that connection would be for you to tell us what we paid you before the Western Classification went into effect and what we paid you per day after. Why did you not give those figures in your Exhibit?

Mr. FRIES: The statement in question is compiled from the figures submitted by the Procter & Gamble Company in claims against the C. H. & D., the Big Four and the B. & O. S. W. in which they show the actual amount they have been compelled

1711 to pay during the first five months of this year as compared with or over the rates existing previous to January 1st, and the average per day as figured out from this statement.

Mr. WARRINGTON: I know; but that does not answer my question. Can you tell me the percentage of increase which the Procter & Gamble Company paid during that time over what it would have paid at the old Classification rates?

Mr. FRIES: Per box or per hundred pounds?

Mr. WARRINGTON: Any way you choose.

Mr. FRIES: Well, based on one month—the month of May—the figure was 3.03 cents per box average advance in price due to the advance in the classification.

Mr. WARRINGTON: But that is not telling me anything. What was it per box before?

Mr. FRIES: What was the rate per box?

Mr. WARRINGTON: Yes, sir.

Mr. FRIES: To what point?

Mr. WARRINGTON: Any of these points.

Mr. FRIES: It would vary, of course, with the point.

Mr. WARRINGTON: What I am trying to learn from you is what percentage of advance in rates the 3 cents per box means.

Mr. FRIES: What percentage of advance?

1712 Mr. WARRINGTON: Yes, sir, upon your freights. You have been giving percentage of advance in prices. I want to see what your percentage of advance in rates on soap has been.

Mr. FRIES: It is a little less—taking the New York rate for example the sixth class rate is 26½ cents—3.03 is a little less than 15 per cent. of that.

Mr. WARRINGTON: How about Chicago?

Mr. FRIES: Chicago the sixth class rate is 12 cents and 3.03 would be just a trifle over 25 per cent.

Mr. WARRINGTON: You have not figured out to give us a result in percentages. I mean generally as you have here.

Mr. FRIES: No, sir; it is shown for each point and then the average.

Mr. WARRINGTON: No, but that is the increase. What you are doing is to give in cents what the increase is per box. I want to find out what the percentage is.

Mr. FRIES: This is shown here. Take New York; The difference is 4½ cents on carloads; the per cent. of difference is 20.09 per cent.

Mr. WARRINGTON: That is not set down, is it?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Let us see (paper handed to Mr. War-

1713 rington). So it runs from 18 to 28 per cent. of an increase in your rates?

Mr. FRIES: On carloads.

Mr. WARRINGTON: Now, have you figured out the rate of increase on less than carloads?

Mr. FRIES: Yes, sir; one statement covers carloads and the other less than carloads.

Mr. WARRINGTON: That runs from 16 to 24 per cent. of increase. I am reminded to ask you, when you gave the amounts per day which the Procter & Gamble Company pays in the way of increase could you not have given in with these the total sum paid so that we could get at the percentage of increase that way? What do you compare—67.80 or 78.22?

Mr. FRIES: The amount per day of the total amount claimed by the Procter & Gamble Company we have paid in excess——

Mr. WARRINGTON: What I ask is why did you not give the total we paid you on that day?

Mr. FRIES: On that day?

Mr. WARRINGTON: On any day, if you want to give the average.

Mr. FRIES: The statements did not show it.

Mr. WARRINGTON: Exhibit No. 54 in showing the rates
1714 from Ivorydale to various points based on the average rate per ton per mile—why did you use all of the United States instead of the average on your own road.

Mr. FRIES: I took the farthest point east to which the bulk of the business of the Procter & Gamble Company via our line goes, New York; the farthest point north of the B. & O., Pittsburg; the farthest point west of our line, St. Louis, and as a further example Columbus which is a short point.

Mr. WARRINGTON: That is not the question I am asking you at all. May be I can get at it this way: What is the average rate per ton per mile within the United States?

Mr. FRIES: .758 for the year ending June 30, 1898.

Mr. WARRINGTON: And for 1899 it is 724. Let me take your figures, .758 for 1898, what was the average rate per ton per mile which your road was getting that year?

Mr. FRIES: I cannot give it from memory. For 1899 it was .527.

Mr. WARRINGTON: That was not what I asked you.

Mr. FRIES: I said I could not give it from memory. We have a statement there that gives it.

Mr. WARRINGTON: What statement is it, Mr. Maxwell?

Mr. MAXWELL: It is statement No. 49.

1715 Mr. WARRINGTON: Now, let us see. In 1898 your average rate was .55; is that right?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Now, you take all the United States because that was .75.

Mr. FRIES: Not for that reason.

Mr. WARRINGTON: Well, if you had taken your own average rate it would have made quite a different result, would it not? You would have found soap paying you, would you not?

Mr. FRIES: No, sir.

Mr. WARRINGTON: How much do you accord soap? You mean to say that soap at the sixth class rate would not be above your .55.

Mr. FRIES: I did not figure out.

Mr. WARRINGTON: Then, why do you say it would not have paid.

Mr. FRIES: Because we figure that we should get for soap a rate equal to the average rate on all classes of freight over all roads of the United States.

Mr. WARRINGTON: Now, just state why? Why should the Baltimore & Ohio that carries at an average of .55 figure that soap should pay, and that all of this freight should pay at the
1716 rate of .75?

Mr. FRIES: For the reason that the average for all railroads of the United States of all freight is computed based on the rates existing on all classes of freight; high class; low class and low commodities and for the further reason that the bulk of the freight carried by those roads is in the low commodities and therefore an average rate computed on that basis would necessarily be of a much lower basis and we should get that for freight contained in these classes.

Mr. WARRINGTON: Have you any other reason?

Mr. FRIES: Not that I can recall at the present time.

Mr. WARRINGTON: Then if I understand you, you claim that you should get for everything, that is, every article that is within the class rates, for carriage over the Baltimore & Ohio Southwestern the average of all the roads in the United States?

Mr. FRIES: We would like to do so.

Mr. WARRINGTON: You would like to do so. Do you do any such thing as that?

Mr. FRIES: I can not answer definitely without figuring on all the different things.

Mr. WARRINGTON: Did you not tell me awhile ago that the
1717 western roads running through a more sparsely settled country ought to have higher rates than those in the Official classification territory?

Mr. FRIES: No, sir.

Mr. WARRINGTON: You did not mean to say that?

Mr. FRIES: I did not say that.

Mr. WARRINGTON: And you wont say it

Mr. FRIES: I did not say it.

Mr. WARRINGTON: What will you say on the subject?

Mr. FRIES: You asked me a question——.

Mr. WARRINGTON: Just drop what I asked you. I ask you a question now Do you claim that the roads in the Official Classification territory should receive rates as high as those in the western?

Mr. FRIES: As a general proposition I should say yes.

Mr. WARRINGTON: Would you say it of the Southern?

Mr. FRIES: Yes sir.

Mr. WARRINGTON: Did you ever fix rates in your life?

Mr. FRIES: I have.

Mr. WARRINGTON: Is that your business with your company?

Mr. FRIES: To a degree, yes sir.

1718 Mr. WARRINGTON: Then you disapprove of the Official Classification rates altogether. Is that right?

Mr. FRIES: No.

Mr. WARRINGTON: Well, why not? you do not claim that the Official Classification rates are as great as the Southern and Western, do you?

Mr. FRIES: The Official Classification does not fix the rate.

Mr. WARRINGTON: Now, mark, I am talking about rates—Official Classification territorial rates—put it that way.

Mr. FRIES: There is no such thing.

Mr. WARRINGTON: Well, then the rates charged within the Official Classification territory. Is there such a thing as that?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Now, do you claim that those rates are as high as those in the Southern territory?

Mr. FRIES: I understand they are not.

Mr. WARRINGTON: Do you claim they are as high as those in the Western territory?

Mr. FRIES: I understand they are not.

Mr. WARRINGTON: Then the reason why you used the average rates within the United States was because you disapprove
1719 of these differences between the territorial rates I have mentioned?

Mr. FRIES: No, sir.

Mr. WARRINGTON: Well, you think they ought to be different and re-arranged.

Mr. FRIES: I would like for it to be possible to get as high rates in the Official Classification territory as they get in Southern and Western Classification territory.

Mr. WARRINGTON: Well, it is your judgment that that ought to be?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Then that is the reason why you used the average rate for the United States, is it?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: It is, then, a comparison of what you think the rates ought to be in the Official Classification territory rather than of what the rates are. Does it not come to that?

Mr. FRIES: Will you please state the question again?

The question was repeated by the stenographer.

Mr. FRIES: No, sir.

Mr. WARRINGTON: Well, we will have to consider that.
1720 As your counsel say we will have to wrestle with each other as to the logic of your position. I will ask you another thing: Why did you not use the average rate per mile in the Official Classification territory to compare with?

Mr. FRIES: So far as my understanding goes it is not given in Poor's Manual separately.

Mr. WARRINGTON: Then it was only because you did not have those figures?

Mr. FRIES: Exactly.

Mr. WARRINGTON: Well, suppose I were to tell you that in Groups I, II and III the average rate per ton per mile was .59. Groups I, II and III are practically the Official Classification territory. For my purposes you may so treat them. In that the average is .595 for 1899 against your .527. So you would not even submit to using a comparison which would involve the Official Classification territory, would you, in making up this Exhibit?

Mr. FRIES: I do not know of those figures you speak of.

Mr. WARRINGTON: Exhibit No. 51 which shows gross earnings and gross expenses and percentage of expenses to earnings that you produce—that went through a receivership and went through a great change in tunnels, alignment, grades, reduction in
1721 curves, heavier rails, heavier bridges and heavier equipment, did it not?

Mr. FRIES It covers that period, yes sir.

Mr. WARRINGTON: And the transition was embraced within the period you give here in Exhibit 51 touching the B. & O. per centage of expenses to earnings?

Mr. FRIES: Those expenses were not charged to operating expenses. As already explained they were covered by bond issue.

Mr. WARRINGTON: Well, I know they were operating under a isadvantage.

Mr. FRIES: Yes, sir, at that time.

Mr. WARRINGTON: Now, when you gave from Poor's Manual the verage rate per ton throughout the United States and the average te per ton on the B. & O. Southwestern, you did that to show the ecrease, did you not?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Did you make up the gradual decrease in exenses, cost of handling the freight for those years?

Mr. FRIES: I did not.

Mr. WARRINGTON: Well, it would help very much if we had the two to compare with.

722 Mr. FRIES: Increase in expenses?

Mr. WARRINGTON: If you wish to give what it costs per n per mile on the B. & O. Southwestern you have the figures to do at—for hauling freight?

Mr. FRIES: Not in our office. They are on file in the accounting epartment.

Mr. WARRINGTON: Where is the accounting department?

Mr. FRIES: In Cincinnati.

Mr. WARRINGTON: Now, you could have had those figures just as ell as these.

Mr. FRIES: Those figures were made up after I came to Washgton, taken from Poor's Manual.

Mr. WARRINGTON: Then you have not taken any steps to get the her figures—cost per ton per mile—have you?

Mr. FRIES: No, sir.

Mr. WARRINGTON: I want to ask you one thing about average rload weights. What does that mean? Who gave you this Exibit?—it is Exhibit No. 48.

Mr. FRIES: It is a statement of the prices quoted me on the articles entioned in carload lots by the different firms also given in the statement.

723 Mr. WARRINGTON: Did they give you the figures of what was usually in a car?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Then you do not know anything on that subct except as people told you how much they load in a car?

Mr. FRIES: As regards the price I only know what they told me. s regards loading I have knowledge of that from general knowledge f the freight business.

Mr. WARRINGTON: Did you check it against your record?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: So that you got an average of so much?

Mr. FRIES: It is not an actual average. In a good many cases the hipments will be loaded much heavier than that weight.

Mr. WARRINGTON: Now, Brown & Edmunds' tobacco fertilizer. low do you know that they load an average of 30,000 pounds?

Mr. FRIES: They will load much heavier than that on the averge.

Mr. WARRINGTON: You state it here as 30,000.

Mr. FRIES: That was a light average. I took the lowest average in each case.

1724 Mr. WARRINGTON: These were not taken actually like ours?

Mr. FRIES: No, sir.

Mr. WARRINGTON: Referring to your Exhibit No. 56 at random, do you mean to say that the rate to Albany between 1887 and 1900 did not advance?

Mr. FRIES: Will you let me see the statement?

Statement was handed to witness.

Mr. FRIES: Yes, sir; the class rates did not so far as the tariffs on file in our office show.

Mr. WARRINGTON: You did not show any commodity rates in the South at all.

Mr. FRIES: No, sir.

Mr. WARRINGTON: You know there are a great many commodity rates down there, do you not?

Mr. FRIES: Yes, sir; also in Official Classification territory.

Mr. WARRINGTON: Have not the rates to Mississippi River points advanced?

Mr. FRIES: The rates to Memphis, New Orleans and Meridian, the only Mississippi River points covered by the statement have not advanced.

Mr. WARRINGTON: Take Davenport and Keokuk. You

1725 say there has not been any advance to those points?

Mr. FRIES: I have not got the figures.

Mr. WARRINGTON: How can you say there has been no advance if you have not?

Mr. FRIES: I did not say there had been no advances.

The CHAIRMAN: He said there had been no reductions.

Mr. WARRINGTON: No reductions, I meant to say.

Mr. FRIES: Davenport and Keokuk are not in Official Classification territory.

Mr. WARRINGTON: That is all.

Mr. COLSTON: You stated that in reference to the quantities of coal used—Mr. Warrington asked you why you had not stated it—have you got a statement of the tons for each fiscal year?

Mr. FRIES: I have.

Mr. COLSTON: I do not know whether these details are needed. I do not suppose they are, but I am trying to protect myself from criticism in the closing argument. Are they given?

Mr. FRIES: They are.

Mr. COLSTON: You can furnish them?

Mr. FRIES: I can.

1726 Mr. COLSTON: Just read them out then.

The CHAIRMAN: Has he not those figures on a statement that he can furnish?

Mr. COLSTON: I do not think he has.

The CHAIRMAN: I do not know what the purpose of these figures is. It seems to me the more material point would be the prices they paid.

Mr. COLSTON: That is my idea too.

Mr. MATTEWS: The statement gives the bulk amount paid for coal in a year.

The CHAIRMAN: I thought he had produced a statement showing the rates they had paid each year for a period of years?

Mr. FRIES: That is correct.

The CHAIRMAN: He also produced a statement showing the gross sum.

Mr. FRIES: That is correct.

Mr. COLSTON: Then, Mr. Fries, it is agreed that one of these statements you have already submitted does show the number of tons you used in one year?

Mr. FRIES: No, sir, the gross amount paid and the prices that ruled each year.

1727 Mr. COLSTON: The price per ton.

Mr. FRIES: Yes, sir.

Mr. COLSTON: The only thing omitted is the actual number of tons?

Mr. FRIES: Exactly.

Mr. COLSTON: I do not think that is necessary. It can be figured out.

The CHAIRMAN: Unless you want to take the actual number of tons from independent sources it is not worth while to make the computation here.

Mr. COLSTON: Then I will pass that. Now, this new construction work you have been questioned about and the purchase of this new equipment. None of that, so far as you are able to state, is charged to operating expenses?

Mr. FRIES: So far as I know it is not charged to operating expenses.

Mr. COLSTON: Mr. Warrington dwelt a great deal upon a disadvantage in economical considerations of conducting the traffic during the time certain improvements were going on and during the time of receivership. Do you know of there being any increased cost of operation growing out of those facts?

Mr. FRIES: I do not know of a single dollar's increase.

1728 Mr. COLSTON: He also asked you this question, that in the period covered by your list of operating expenses the benefit, if any, to result in the way of economical administration resulting from employment of new and bigger equipment had not been realized yet. On that point I want to ask if you can give the dates on which this equipment was acquired. Whether any was acquired in 1898 or 1899 so as to show the proportion of expenses to receipts in 1899.

Mr. FRIES: 250 Eighty-ton steel coal cars were acquired in 1898. The other equipment was all acquired in the year ending June 30, 1899.

Mr. COLSTON: Prior to June, 1899?

Mr. FRIES: Yes, sir.

Mr. COLSTON: I will ask you whether you have knowledge that the price of labor of any kind on the B. & O. S. W. has increased, and if so, when?

Mr. FRIES: I have no knowledge on that subject.

Mr. COLSTON: Do you know whether there was a strike of the trackmen?

Mr. FRIES: There was.

Mr. COLSTON: Recently?

1729 Mr. FRIES: I believe within the last two or three months.

Mr. COLSTON: Do you know what the result of it was?

Mr. WARRINGTON: I object to that. Here, again, is one of those incidental features. A strike occurs and that is to go into a question of this sort.

The CHAIRMAN: We are not disposed to go into that.

Mr. COLSTON: I merely called the matter to his attention in order to call to his mind whether there may have been an increase in the price of track labor. I do not care anything about whether it was caused by the strike or not. I did not know whether he knew it and I thought it would be called to his mind by that circumstance. Are you reminded now of the fact of there being an increase in the price of track labor?

Mr. FRIES: There was. It was increased from $1.15 to $1.25. That was within the last three months.

Mr. COLSTON: So far as the prices of these various materials are concerned, Mr. Warrington has asked you whether you had any familiarity with these prices or whether they were obtained of the purchasing agent. Your knowledge of what those prices are is obtained from what he put down on the book as being paid?

1730 Mr. FRIES: It is obtained from the actual amounts paid out on vouchers.

Mr. COLSTON: You do not know whether he paid too much or too little for the articles bought?

Mr. FRIES: No; I do not.

Mr. COLSTON: Is the purchasing agent of that road a man of experience in the business?

Mr. FRIES: He is a man of long experience.

Mr. COLSTON: You have made a computation which has been submitted here showing that the amount per working day of increase for Procter & Gamble of putting soap into fifth class would be on their traffic, sold over the three lines, $78.22 a day. In making this estimate that leaves them in possession of the cent and a half and the two cents provided for in this contract.

Mr. FRIES: Yes, sir; that is not deducted in making the computation.

Mr. COLSTON: You were asked about whether you had made any estimate of the cost per ton per mile of carrying freight. I will ask you whether or not in your judgment it is possible that any such calculation can be made with reliable results.

Mr. WARRINGTON: I object to that. He is not qualified

1731 to speak on that, if your Honors please. All I asked about that was whether he had those figures and he said those figures are in the accounting department at Cincinnati and can be obtained from that point.

Mr. COLSTON: I withdraw the question in that shape. Do you

say that the accounting department at Cincinnati has figures to show the cost of carrying freight per ton per mile?

Mr. FRIES: No, sir; if I said that I did not mean it.

Mr. COLSTON: You do not know of the existence of such figures, do you?

Mr. FRIES: No, sir.

Mr. COLSTON: You have a statement here showing other peoples' loading, average loading of cars. Let me understand how you got that average loading of cars by other people than Procter & Gamble so far as you have submitted it here.

Mr. FRIES: I do not understand the question.

Mr. COLSTON: On this list of prices of other articles than soap, there is, as I understand it, a statement of the average loading which other people had of their commodities, concerning which Mr. Warrington interrogated you on cross-examination. I want
1732 you to state how you got—from what source you got the average loading which other people than Procter & Gamble did so far as you have submitted it to the Commission. Where did you get that average loading from?

Mr. FRIES: I interrogated the shippers who gave me the prices and also compared them with knowledge I have as regards the loading of commodities.

Mr. COLSTON: Then their statement as checked by your knowledge is the one you submitted to the Commission?

Mr. FRIES: Yes, sir.

Mr. COLSTON: Do you state that that is correct absolutely?

Mr. FRIES: In my judgment.

Mr. COLSTON: That is all.

Mr. MAXWELL: I wish you would compare the rate of revenue that you get on a shipment with the amount which Mr. Warrington says was the average earnings per ton per mile of railroads in the Official Classification territory in 1899. There is a calculation I made (handing paper to witness). Perhaps you can save time by looking at that.

Mr. FRIES: The figures I have here show on the face the average rate existing in Groups I, II, and III; .595 of a cent per
1733 ton per mile gives a rate to New York of 23 cents per hundred pounds instead of the former sixth class rate of 21½ cents per hundred pounds.

Mr. MAXWELL: That is 21½ cents without deducting the Ivorydale & Mill Creek Valley share?

Mr. FRIES: Without deducting the Ivorydale & Mill Creek Valley.

Mr. WARRINGTON: Whose mileage is that on?

Mr. FRIES: This is the B. & O. Southwestern and the B. & O. mileage.

Mr. WARRINGTON: How much is that mileage?

Mr. FRIES: I think the actual mileage is 764 with one added for the bridge, which brings it up to 765.

Mr. WARRINGTON: What is the short mileage?

Mr. FRIES: I think there is one line 760 miles.

Mr. WARRINGTON: Do you mean the B. & O. and B. & O. S. W. is as short a line as the Pennsylvania to New York?

Mr. FRIES: I know 765 is our actual mileage because I have figured it.

Mr. WARRINGTON: Do you say the Pennsylvania is only 5 miles shorter than your line?

Mr. FRIES: I do not make any statement on that question.

Mr. WARRINGTON: Then you do not know what the mileage is?

1734 Mr. FRIES: My understanding is that the Pennsylvania has the short mileage. Just what the figure is I do not know.

Mr. MAXWELL: That is entirely foreign to any question presented here.

Mr. WARRINGTON: We will argue that later. Now, just figure Parkersburg there on your line.

The CHAIRMAN: We ought not to spend much time figuring.

Mr. MAXWELL: You cannot get those facts except by knowing the mileage.

Mr. FRIES: The distance from Cincinnati to Parkersburg is 195 miles; from Parkersburg to Baltimore 387 miles; from Baltimore to Philadelphia 96 miles, and Philadelphia to New York 91 miles. Now, I may possibly be mistaken about those last two distances. I may have them changed about, but those are the two factors. That brings it up to 769 miles, deducting 7 miles from Cincinnati to Ivorydale leaves 762 and adding 3 miles, I think, for the bridge, gives 765.

Mr. WARRINGTON: That was not what I asked you. I asked you to make that classification according to the Official Classification average rate per ton per mile to Parkersburg.

1735 Mr. MAXWELL: While he is doing that I want to offer page 6 of the Annual Report of his road.

Mr. WARRINGTON: I do not know what your rule is your Honors. Of course there is a great difference between their offering a Report of their President and our offering it.

The CHAIRMAN: Let us first dispose of what is asked the witness. He is asked by you to apply those rates to the Parkersburg distance.

Mr. WARRINGTON: Yes, sir.

Mr. FRIES: Based on the average existing in Official Classification territory, on the Ivorydale distance from Ivorydale to Parkersburg, 188 miles, would give a rate of $1.11 per ton or 5.6 cents per hundred pounds.

Mr. WARRINGTON: What is the rate you calculated?

The CHAIRMAN: Have you made the calculation?

Mr. FRIES: Yes, sir.

The CHAIRMAN: What is the result?

Mr. FRIES: The sixth class rate from Ivorydale to Parkersburg is 12 cents and the rate based on the average existing in the Official Classification territory as stated by Mr. Warrington, would give a rate of 5.6 cents per hundred pounds.

1736 Mr. WARRINGTON: Then, you were getting double above the average there?

Mr. FRIES: Double above the average rate, yes, sir.

Mr. WARRINGTON: Let me ask a question which I forgot. I will ask you whether the 55 cents per car paid the Southern was the sum agreed upon at the time you leased your station or depot to that Company. Was that involved in your disposition of a freight depot.

Mr. FRIES: I cannot answer that question. I do not know. I know merely the rate at which——

Mr. WARRINGTON: I want to ask you if it was not an object on your part to get rid of the depot and get in your new one?

Mr. FRIES: Yes, sir.

Mr. WARRINGTON: Now, when you got to the new ones—which I believe are up at Central Avenue, are they not?

Mr. FRIES: Well, it was not a new depot. We just consolidated——

Mr. WARRINGTON: At any rate that made it unnecessary for you to keep the Mill Street property.

Mr. FRIES: Correct.

1737 Mr. WARRINGTON: Did you not agree to do switching work there in consideration of the Southern taking that old property off your hands at a reduced rate.

Mr. FRIES: I have no direct knowledge, but I would assume——

Mr. COLSTON: I object to the assumption.

The CHAIRMAN: He says he does not know. Let us go on with what he knows.

Mr. WARRINGTON: I have no more questions.

There being no further questions the witness was excused.

Mr. MAXWELL: What do you say to introducing that in evidence, page 6? (Producing Annual Report of President of B. & O. S. W. for 1899.)

Mr. WARRINGTON: You read that and I will the next part.

The CHAIRMAN: Mr. Maxwell offers in evidence page 6 of the Annual Report of the B. & O. S. W. for 1899.

Com'r CLEMENTS: Is that the Report to the Directors?

Mr. MAXWELL: The Report of the President to the stockholders for the fiscal year ending June 30, 1899.

The CHAIRMAN: Mr. Warrington makes no objection. Now, Mr. Warrington says he wants to offer something else that appears in that same Report.

1738 Mr. WARRINGTON: What follows it? Indeed, I have not had a chance to go over it.

Mr. COLSTON: This is the same one you had in your possession. We have not withheld the opportunity.

Mr. WARRINGTON: I did not mean to so charge.

Mr. MAXWELL: Let me state briefly what this shows: The percentage of cost of operation for the fiscal year has been increased, as appears by Mr. Fries' statement; that there was an increase of tonnage and decrease in average amount received per ton per mile as stated, and that amounted to $235,319 on the number of tons

hauled that year. This was greater than the amount received for the increased tonnage, thus accounting for the decrease in freight revenue of one hundred and fifty four odd thousand dollars. This loss was offset by an increase of one hundred and forty three odd thousand dollars in passenger earnings and eleven odd thousand dollars in miscellaneous earnings. The gross revenue shows a decrease of thirty one odd thousand dollars, which is the approximate loss in revenue from express and telegraph service.

"The cost of conducting transportation shows a decrease
1739 of $161,012.63, made up for the greater part of a reduction in the train mileage and in the amount paid other railroads for mileage on cars. Owing to the increased expenditures for maintenance, the net cost of operation exceeded that of the previous year by $98,741.71."

Then he refers to the detail.

The CHAIRMAN: Now, Mr. Warrington, you may read the other portion, if you desire to. Can you not retain that and read it to-morrow?

Mr. WARRINGTON: We will read it in rebuttal.

Mr. MATTHEWS: We can decide what we want to offer and offer it in rebuttal.

The CHAIRMAN: If you know what you want to read, just read it now.

Mr. WARRINGTON: We waive the reading and offer the remainder down to signature of Edward R. Bacon on page 9.

1740 B. S. MACE, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. COLSTON: You are connected with the purchasing department of the Baltimore & Ohio Railroad Company, I believe?

Mr. MACE: Yes, sir.

Mr. COLSTON: How long have you been connected with that department of that road?

Mr. MACE: I have been connected with the department since August 1st, 1889.

Mr. COLSTON: What part do you do? Do you do any part of the purchasing or keeping the accounts?

Mr. MACE: I do certain portions of the purchasing and have charge of the accounts.

Mr. COLSTON: That is to say you are familiar with the actual purchases, with the prices of certain articles, and with the rest of them you are familiar with what is paid, by keeping the accounts?

Mr. MACE: Yes, sir.

Mr. COLSTON: I asked you to bring here a statement of prices. Have you done so?

Mr. MACE: I have, sir.

1741 Mr. COLSTON: Have you got the statement?

Mr. MACE: Yes, sir (producing statement).

Mr. COLSTON: Will you state to the Commission in a general way what that paper shows?

Mr. MACE: It is a statement showing the average cost of material from January 1, 1896, to January 1, 1900.

Mr. COLSTON: In a general way, what is the material covered by the statement?

Mr. MACE: In a general way it covers materials such as is used in operating expense—car building, locomotive building and track material.

The CHAIRMAN: And you have the average prices paid during each year for the series of years named?

Mr. MACE: I have, sir, at the first of the year commencing certain periods.

Mr. COLSTON: Does this statement show an increase or decrease in these prices on the average?

Mr. MACE: It shows an increase in 1899 and 1900.

Mr. COLSTON: What is the percentage of increase in 1899 and 1900 over 1898?

Mr. MACE: I should say the average increase—in 1899 over 1898, did you say?

Mr. COLSTON: Yes, sir; I said 1899 and 1900.

1742 Mr. MACE: The average increase in 1900 over 1899 is about, I should say, 45 per cent.

Mr. COLSTON: Are you simply making a mental estimate from the figures before you?

Mr. MACE: Yes, sir.

Mr. COLSTON: You have not that on the paper, that estimate?

Mr. MACE: No, sir; I have not made an average estimate. I have the increase on each item.

Mr. COLSTON: What is the percentage of increase of 1899 over 1898?

Mr. MACE: Well, it is about, I should say, 10 per cent.

Mr. COLSTON: Does 1898 show an increase over 1897?

Mr. MACE: I have not that worked out.

Mr. COLSTON: Only those three years, or two years and part of a year?

Mr. MACE: Yes, sir.

Mr. COLSTON: Did you check those articles from any source or against anything?

Mr. MACE: I checked them against our records.

Mr. COLSTON: What do your records show—actual prices paid?

1743 Mr. MACE: Yes, sir.

Mr. COLSTON: Are they correct as thus checked?

Mr. MACE: They are.

Mr. COLSTON: We offer that statement in evidence in connection with the testimony of this gentleman.

(The same is hereto annexed and marked "Exhibit No. 57, Mace.")

Mr. COLSTON: You may cross examine the witness.

Cross examination:

Mr. WARRINGTON: While this is being looked over, there are one or two questions I want to ask. For instance, you see articles on a paper of this kind—let me take an article at random (referring to statement). I see "driving springs". I do not know what driving springs are—and there is an increase of 36.4 per cent. How much does an item of that kind really figure in a great railroad?

Mr. MACE: The matter of driving springs is a very important item.

Mr. WARRINGTON: What is it—those that are on the locomotives, on the drivers?

Mr. MACE: Yes, sir.

1744 Mr. WARRINGTON: But when you come to the percentage of any one of those things and carry out the bulk of the expenditure for a year, it would not be great relatively, would it?

Mr. MACE: Well, of course, on a system like the Baltimore & Ohio Railroad the matter of driving springs cuts quite a figure.

Mr. WARRINGTON: Well, I will take that. I am glad I struck an important figure. How much would the B. & O. spend in a year on driving springs?

Mr. MACE: I am not prepared to answer that.

Mr. WARRINGTON: Could you approximate it?

Mr. MACE: No, I could not.

Mr. WARRINGTON: Could you of any of the articles here. I notice steel axles seem to have quite a rise in price. Now, could you give an idea of what that would signify in amount on as big a road as the B. & O. in a year?

Mr. MACE: Our contract for steel axles—we use about 3500 a year. That is repairs alone and does not include any new axles bought under new equipment.

Com'r FIFER: What are they worth?

Mr. MACE: They weigh from 350 to 500 pounds and cost

1745 about three cents a pound——

Com'r FIFER: Give it roughly.

Mr. MACE: Well, from $10.50 to $17.50. It depends on the size.

Mr. WARRINGTON: Have you observed what has been mentioned here once or twice, that at a time prices seemed to reach their summit and then start down again?

Mr. MACE: I have, sir.

Mr. WARRINGTON: What is that time according to your observation?

Mr. MACE: When they reached the summit?

Mr. WARRINGTON: Yes, sir.

Mr. MACE: In the matter of steel and iron products they reached their summit I think in March.

Mr. WARRINGTON: Of this year?

Mr. MACE: Yes, sir; I think so.

Mr. WARRINGTON: And are you able to give the Commission an approximation of percentage decrease—how fast has it been going down from the summit since?

Mr. MACE: It has not been going very fast. That applies only to iron and steel products.

Mr. WARRINGTON: Could you tell us about what the percentage of reduction has been?

1746 Mr. MACE: I presume on bar iron about 25 per cent.

Mr. WARRINGTON: Could you give it on any other article?

Mr. MACE: No, I could not.

Mr. WARRINGTON: Do you happen to know how prices ranged from 1887 to 1890?

Mr. MACE: I have not it in my possession. I could get it.

Mr. WARRINGTON: You are not able to give it now?

Mr. MACE: No, not offhand.

Mr. WARRINGTON: Could you give us anything like the percentage of reduction which took place since, say, the period of 1887 and 1891 or 1892 up to 1898?

Mr. MACE: No, I could not.

Mr. WARRINGTON: When did the lowest period of prices come in the 90's?

Mr. MACE: I think it was about 1897—1897 or 1898, probably.

Mr. WARRINGTON: It was quite low then?

Mr. MACE: Yes, sir.

Mr. WARRINGTON: Low prices prevailed for some time in the years preceding that?

Mr. MACE: In 1897 and 1898 I think they reached their low-

1747 est ebb?

Mr. WARRINGTON: They were coming down gradually from 1894 and 1895—from the time of the panic on?

Mr. MACE: I should say they were, at random. I would not say positively on that.

Mr. WARRINGTON: That is all.

Mr. COLSTON: I do not think there is any reexamination. Your honors understand the scope of the articles on this paper—everything that enters into railway construction or operation.

There being no further questions, the witness was excused.

Mr. BAYLESS: I would like to recall Mr. Johnson on one matter.

THOMAS H. JOHNSON, recalled.

Mr. BAYLESS: You are the civil engineer of the Pennsylvania Company?

Mr. JOHNSON: The P. C. C. & St. L.

Mr. BAYLESS: You have testified before?

Mr. JOHNSON: Yes, sir.

Mr. BAYLESS: You testified in regard to the elevation of tracks in Chicago. I will ask you to state what you know of a statute

1748 in force now in Indiana, an ordinance passed by the city council of Indianapolis requiring the elevation of all railway tracks in the city of Indianapolis.

Mr. WARRINGTON: Can you not produce those? You could certainly produce the statute.

Mr. BAYLESS: I can certainly produce the statute. I only want to know what he knows.

Mr. JOHNSON: I do know.

Mr. BAYLESS: Do you know of proceedings had covering the period of the last two years by the city council of Indianapolis on the motion of the board of trade of Indianapolis regarding the elevation of railway tracks within the city limits of Indianapolis?

Mr. JOHNSON: I do.

Mr. BAYLESS: Have you attended any of those meetings?

Mr. JOHNSON: I attended a meeting at the board of trade, I think it was in 1895—one of the preliminary meetings leading up to the action recently had by the city council.

Mr. BAYLESS: What, if anything, do you know of the ordinance requiring the railroad companies to begin that work on or before January 1st of this year? What is your understanding of
1749 this year? I have not a copy of the ordinance. I admit that this is not the best evidence, but I will furnish a copy of the ordinance.

Mr. WARRINGTON: I offer a formal objection.

Mr. BAYLESS: Have you made an estimate of the expense it would be to your company to comply with that ordinance, elevating your tracks in Indianapolis?

Mr. JOHNSON: I have.

Mr. BAYLESS: Will you give it to the Commission.

Mr. WARRINGTON: I object.

The CHAIRMAN: We will take that.

Mr. WARRINGTON: I except.

Mr. JOHNSON: The estimated expense under that ordinance to the P. C. C. & St. L. would be $1,347,000. In addition to that the expense of the Indianapolis Union Railway would be $1,553,000, of which the P. C. C. & St. L. lines would have to assume about 25 per cent., which would be $390,000, making the total cost to the P. C. C. & St. L. $1,737,000.

Mr. BAYLESS: Are you acquainted in a general way with the tracks of the road, commonly known as the Big Four Railway at Indianapolis?

Mr. JOHNSON: In a general way.

Mr. BAYLESS: You may state if you know whether the
1750 amount of their expense to comply with this requirement would be as much or more than the Pennsylvania.

Mr. WARRINGTON: Have you made any estimate of the Big Four?

Mr. JOHNSON: I have not.

Mr. WARRINGTON: If the Commission want to take the figures, I will not object.

The CHAIRMAN: He is not giving any figures, but simply his estimate of whether it will cost that road about as much as his own.

Mr. BAYLESS: Which road has the greater amount of trackage in Indianapolis, the Big Four or the Pennsylvania, taking all the lines?

Mr. JOHNSON: I should think the Big Four had more mileage within the city limits.

Mr. BAYLESS: What do you know of the C. H. & D.

Mr. JOHNSON: The C. H. & D. would be affected.

Mr. BAYLESS: The Lake Erie & Western?

Mr. JOHNSON: They would be affected.

Mr. BAYLESS: The I. D. & W.?
Mr. JOHNSON: They would be affected.
Mr. BAYLESS: And the Monon?
Mr. JOHNSON: The Monon would be affected to a less ex-
1751 tent, because they are using the Lake Erie & Western tracks.
Mr. BAYLESS: How about the Vandalia?
Mr. JOHNSON: The Vandalia would be affected.
Mr. BAYLESS: Do you know anything about an estimate of the ntire expense as having been made by the board of trade—the ntire expense to all railroad companies for the elevation of these racks at Indianapolis to comply with this order?
Mr. JOHNSON: I know in a general way that such an estimate as made?
Mr. BAYLESS: Can you inform the Commission about what that stimate would be on one or two plans?
Mr. JOHNSON: I think the estimate was based on two alternative chemes?
Mr. BAYLESS: State them to the Commission.
The CHAIRMAN: We will not go into details about this. It is sufficient that improvements are contemplated there that will cost a large amount.
Mr. BAYLESS: State those amounts.
Mr. JOHNSON: The estimate on one plan amounted to something over $9,000,000 and on the other plan to nineteen millions.
1752 Mr. BAYLESS: State to the Commission what the two plans were?
The CHAIRMAN: Oh no. We do not know which will be adopted. It is not worth while.
Mr. BAYLESS: Well, that is all.
The witness was excused.

Mr. COLSTON: We want to offer the articles of incorporation of the Ivorydale & Mill Creek Valley Railway Company, a certified copy, under the great big seal of the State of Ohio. The date of the articles of incorporation is the 1st of April, 1890; incorporated by William A. Procter, Harley T. Procter, David B. Gamble, Harry W. Brown and Mortimer Matthews. The capital stock stated here is $100,000. Then it states the principal business to be carried on at the termini of the road.
The CHAIRMAN: When was that filed?
Mr. COLSTON: The first of April, 1890.
The CHAIRMAN: That is its date.
Mr. COLSTON: Well, they generally follow soon after. The certificate of the secretary of state is: "Filed in this office the 2nd day of April, A. D. 1890, recorded in volume 43, page 227."
The paper is hereto annexed and marked "Exhibit No. 58, Colston."
1753 Mr. MAXWELL: Mr. Fries desires to make a correction in the record. It is very slight.
The CHAIRMAN: Very well.

ARCHIBALD FRIES recalled.

Mr. FRIES: In giving that example of the Parkersburg rate I had not at hand the tariff of the B. & O. Southwestern and took the sixth class rate of the Big Four in connection with the Ohio River Railroad, which is twelve cents. By our line the rate is 10 cents.

Mr. MAXWELL: That is the correction.

The CHAIRMAN: Any cross examination.

Mr. WARRINGTON: No, sir.

The witness was excused.

Mr. COLSTON: We offer the deposition of William A. Procter, the president of the Procter & Gamble Company. I think this could be read in the interval unless your honors want to adjourn now.

The CHAIRMAN: We will hear that deposition now.

Mr. COLSTON: This deposition was taken on the 9th of June, 1900.

Mr. Colston proceeded to read the deposition of Mr. William A. Procter.

1754 The CHAIRMAN (interrupting reading): How much is there of this?

Mr. MAXWELL: Twenty-eight pages more.

The CHAIRMAN: What is the importance of reading it now.

Mr. MAXWELL: It will have to be read some time.

The CHAIRMAN: If there is anything special you want to call attention to before the argument, that is another thing.

Mr. COLSTON: Then, I will read this question at the bottom of page 5.

Mr. Colston and Mr. Maxwell read portions of the deposition of Mr. William A. Procter, after which other parts of the same deposition were read by Mr. Warrington.

The deposition is on file in the record.

Mr. WARRINGTON: Would you let me read a little from Mr. Bacon's report.

The CHAIRMAN: Certainly.

Mr. WARRINGTON: I will take it up where Mr. Maxwell left off.

Mr. Warrington read as follows:

1755 "Attention has been paid to increasing the train load, and although the result is not such as will be realized when the grades are reduced as contemplated, and the improvements provided for under the Plan are completed, it is thus far most gratifying. The number of tons carried one mile was 840,427,458 as against 825,998,277, with a decrease of 170,349 freight train miles. The revenue freight train load has been increased from 237 tons to 253 tons. This economy of operation is owing to the use of heavier motive power and the adoption of improved methods of handling traffic. The freight train mileage, as stated above, decreased 170,000 miles."

1756 Mr. WARRINGTON: After speaking of the acquisition of materials and the plans of improving the road, he continues: "It was fortunate for the security holders that these contracts were so promptly entered into, not only for the securing of the desired

results at the earliest date, but on account of the favorable prices that were obtained. The difference between the"——

The CHAIRMAN (interrupting): Gentlemen, I think we will suspend for the evening. I thought you only wished to read two or three lines, Mr. Warrington.

Mr. WARRINGTON: All right.

Mr. MAXWELL: We would like to have leave to take depositions on the subject of net weights. It may be that that will be the turning point of this case.

The CHAIRMAN: Counsel need not be reminded that the questions investigated by this Commission have a public interest and are not confined to the interests of the nominal parties to the record. This case presents a question of public policy, because carriers not made defendants here and a great many shippers who are not here as complainants will be affected by any order that is made in this
1757 case by the Commission if that order is put into force immediately by the railroads and we can not afford to reach a conclusion which is not justified by the unquestioned facts or some determination that takes into account all the evidence necessary to reach a proper conclusion on a question of fact. So that if it should appear to us, no matter at what stage of the proceeding, that what we ought to do depends on what the actual practice was in regard to net weights, it would be our duty to obtain that information on our own motion before we decided this case. It is a rather novel suggestion to me that this question of net and gross weights is to cut so much of a figure in the determination of this case.

Mr. WARRINGTON: We do not agree at all to this proposition that it all turns on that at all. That is not our idea.

The CHAIRMAN: I mean this: Supposing a decision that we are to reach in the case turns on some question of fact, about which we are in serious doubt; it seems to me it would be clearly our duty to dispel that doubt and ascertain what the fact is before we reach a conclusion, as it not merely concerns the parties to the record, but all carriers and the whole public. We would like to ascertain
1758 what method of disposing of the case would best accommodate counsel. We do not seem to be able to accomplish much in that direction and I think the only thing is to take an adjournment until 10 o'clock to-morrow morning.

At 6 o'clock p. m., the Commission adjourned until 10 o'clock a. m. Friday, June 29, 1900.

1759 Ninth Day.

WASHINGTON, D. C., *June* 29, 1900—10 o'clock a. m.

The CHAIRMAN: Gentlemen, you may proceed.

Mr. MAXWELL: Mr. McLeod desires to correct a date given in his tesimony.

Mr. MCLEOD: Yes, sir; I wish to correct one date, your honor. In being asked what was the date of the first payment we made to Procter & Gamble, or the I. M. V. Railway Co. of $400.00, I stated that it was February 1, 1891. I desire to correct that. That was the

date of the first payment we made to the I. & M. V. Railway, but before that we had made the same payment to Procter & Gamble, and the first payment was made beginning July 1st, 1887.

Mr. MATTHEWS: To the firm of Procter & Gamble?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: For the month of July, 1887?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: You began paying then at the rate of $400.00 from the first of July 1887?

Mr. McLEOD: Yes, sir; and when the railway was started
1760 in 1891 we continued that payment.

The CHAIRMAN: And then you continued to pay the $400.00 per month until when?

Mr. McLEOD: Until December, 1893. The latter part of these payments were made to the I. & M. V. Railway instead of to Procter & Gamble.

The CHAIRMAN: When were these contracts made?

Mr. McLEOD: Do you refer to the $400.00 contract?

Mr. MAXWELL: The dates are all in the record.

The CHAIRMAN: I know they are, but I desire to have it here in connection with this.

Mr. McLEOD: The first agreement was made May 1st, 1894—the first joint agreement. That was changed January 1st, 1896; so that the payment as it is now made was commenced January 1st, 1896.

The CHAIRMAN: Now what was it between January 1st, 1893 and January 1896?

Mr. WARRINGTON: May 1st, 1894.

The CHAIRMAN: Did it continue until the 1st of May 1894?

Mr. McLEOD: No, sir.

The CHAIRMAN: Was there any payment between?

1761 Mr. McLEOD: We paid them 1 cent per hundred pounds on business to Central Traffic Association Territory, 1½ cents per hundred pounds on traffic to Trunk Line Territory, and $1.50 per car on inbound traffic.

The CHAIRMAN: Bginning the first of January 1893.

Mr. McLEOD: Beginning the first of January 1894, and continuing until May first 1894.

The CHAIRMAN: You began paying the $400.00 per month July 1st, 1887?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: And you say you continued paying that $400.00 up to January 1893?

Mr. McLEOD: No, sir; to the first of January 1894.

The CHAIRMAN: And then you paid at the rate of 1 cent per hundred pounds to Central Traffic Association Territory, 1½ cents per hundred pounds to Trunk Line Territory, and $1.50 per car on inbound traffic up to May 1st, 1894?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Then what did you pay?

Mr. McLEOD: Then 1 cent per hundred pounds on all business outbound and $2.00 per car on inbound freight, with the exception

of coal, and that was $1.00 per car, and it was understood
762 on outbound freight and inbound freight that the road must have a revenue accruing from the rate.

Mr. WARRINGTON: *In* all of these answers which you have made the court up to January 1, 1896, related solely to the C. H. & D. railroad, did they not?

Mr. MCLEOD: No, sir; the payment made from May 1st, 1894 as by joint action of the roads; it was an agreement.

Mr. WARRINGTON: That is to say, the B. & O. S. W., the Big Four nd the C. H. & D. from May 1st, 1894, until January 1st, 1896 aid, all of them, just as you have stated to the Chairman?

Mr. MCLEOD: The agreement was that they should pay.

Mr. WARRINGTON: And so far as you know that was what was one?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: Prior to May 1st, 1894, were your answers tended to apply only to the C. H. & D.?

Mr. MCLEOD: Yes, sir.

Mr. WARRINGTON: Do you know what the other companies did ior to May 1st, 1894?

Mr. MCLEOD: No, sir; not absolutely—from hearsay.

Mr. WARRINGTON: Then why did you say in your other exami-
763 nation that the present arrangement was better than any other previous one?

Mr. MCLEOD: Better for the company.

Mr. WARRINGTON: For the Procter & Gamble Company? You on't know about the other railroad companies, prior to May 1st, 894?

Mr. MCLEOD: Because the arrangements made prior to May, 1894, as never disclosed, but the disclosure of the rates after that time owed that they had never paid any more than these rates that ere agreed to in 1896. I do not know the precise amounts that ere paid previous to May 1st, 1894, absolutely.

Mr. WARRINGTON: Then the truth is you would not know whether ere was more or less paid by the other companies prior to May t, 1894?

Mr. MCLEOD: No, sir; I could not say that I know they were aid, but I know the present arrangement was better for them be- use it was a uniform arrangement, it increased the allowance made our road and some of the others, and that would go to show that e aggregate was better than the previous agreement.

Mr. WARRINGTON: That is your reasoning? Is that the way in ich you reach a conclusion?

Mr. MCLEOD: The present agreement was the result of a
764 disclosure of the figures paid by the three roads, and the present agreement is practically the maximum figure paid by y of the roads.

Mr. WARRINGTON: Was not the first payment which you gave as curring at the time stated in 1887 made about the time that the octer & Gamble co-partnership began business at Ivorydale, or rted to ship from Ivorydale?

Mr. McLEOD: I cannot recall precisely. Poor's Manual shows that the railroad company was chartered in 1890.

Mr. WARRINGTON: Now observe I am not asking about the railroad company at this time. I am simply trying to refresh your memory as to the time the Procter & Gamble co-partnership began to ship from Ivorydale, and I ask further whether it was not at just about the time that you gave as your first payment—July 1st, 1887.

Mr. McLEOD: July 1st, 1887, was not a very long period after they went out there; I do not know how long.

Mr. MATTHEWS: Didn't they begin to build Ivorydale in 1885?

Mr. McLEOD: I could not tell you.

Mr. MATTHEWS: They were a year and a half, or two years building before they went out there, were they not?

1765 Mr. McLEOD: Yes, sir; but the date of 1885 I cannot testify to. I know they were a year or two in building; then they got to work, and after a while they made this arrangement with our company.

Mr. WARRINGTON: That is all.

The CHAIRMAN: Let me see if we all understand this alike. Your company began paying $400.00 from the first of July, 1887, and continued to do that up to the end of the year 1893; then for the next four months you paid on a tonnage basis—up to the first of May, 1894; then on a different tonnage basis up to the first of January, 1896, and from that time on you paid on the basis of the contract that went into effect on that date.

Mr. McLEOD: Yes, sir.

The CHAIRMAN: Now, the other roads began at some time later than July, 1887, to pay the same monthly sum?

Mr. McLEOD: Not a monthly sum.

The CHAIRMAN: Then the others always paid on a tonnage basis?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: And the first concerted arrangement was the one which went into effect on January 1, 1894.

1766 Mr. McLEOD: On the first of May, 1894.

The CHAIRMAN: The first joint arrangement?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: But in the mean time you had changed from a monthly payment to a tonnage payment?

Mr. McLEOD: Yes, sir.

The CHAIRMAN: And you became satisfied during 1894 and 1895 that greater allowances had been made than were provided for by that joint arrangement of May 1, 1894, and so the new basis, the new tonnage basis was agreed upon, it being understood that that basis represented about the maximum amount paid. That is what you understand to be the general facts?

Mr. McLEOD: Yes, sir; those are the general facts.

Mr. WARRINGTON: Are you not mistaken about there being a joint arrangement as early as you put it—May 1st, 1894?

Mr. McLEOD: I have Mr. Macdonald's letter in my files.

Mr. WARRINGTON: That is all.

Mr. COLSTON: The question was put to you as to how you knew

that prior to this arrangement in writing dated January 1st, 1896, the other roads were making payment to Procter & Gamble on a tonnage basis?

1767 Mr. WARRINGTON: No; it was as to what payments they were making.

Mr. COLSTON: How did you know what the other roads were doing?

Mr. McLEOD: The roads had made some agreements at the time in regard to rates in general, and it was understood that we should disclose whatever agreements we had, and in the disclosure of those figures, the Ivorydale allowances were made known.

Mr. COLSTON: Did you find out the amount at the same time?

Mr. McLEOD: Yes, sir; we found out the amount at that time.

The CHAIRMAN: That seems to be all, Mr. McLeod.

Mr. COLSTON: We want to put in evidence this diagram or plat of Ivorydale.

Mr. WARRINGTON: We do not care to object to that more than to make the formal objection. We are going to offer you one which we have just received this morning.

The CHAIRMAN: That is not a very good objection.

Mr. WARRINGTON: I agree, but I wanted to indicate that we did not admit that to be correct; that is all.

Mr. COLSTON: Our friends have had it for the purpose of examination for a week, and have not pointed out anything wrong about it.

1768 Mr. WARRINGTON: We have pointed out by producing a correct one.

The CHAIRMAN: It is hardly worth while to discuss it.

Mr. COLSTON: We will offer this diagram.

The same is hereto attached and marked Exhibit 59.

Mr. MAXWELL: That is all the testimony we propose to offer, subject to an arrangement we desire to make to take testimony as to the net weight practice.

Mr. WARRINGTON: We offer this plat of the Ivorydale plant.

The same is hereto attached and marked Exhibit 60.

Mr. WARRINGTON: On the west is shown the C. H. & D., and on the east by the heavy black line are shown the B. & O. S. W. and the Big Four. By these parallel lines, running north and south is shown Spring Grove Avenue, which cuts the place in two. These lines which run generally east and west, but as you see in irregular directions, are the railroads on the company's grounds. This row of marks,—parallelograms I might say—next to the warehouse are double buildings, two buildings in each.

Mr. MATTHEWS: We count each one of those buildings as two.

Mr. WARRINGTON: The others are all indicated. I think that is all I need to say.

1769 The CHAIRMAN: The warehouse is at the extreme south.

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: All the freight moves out from the warehouse towards the west?

Mr. MACDONALD: Yes, sir; to the C. H. & D.

The CHAIRMAN: And goes to the C. H. & D., and it to the other roads, it swings around and goes east, as these lines indicate?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Does that map show the distances?

Mr. WARRINGTON: No, sir; it does not. We were disappointed that they were not put on it, but we reserve the right to put in those distances.

Commissioner YEOMANS: To show how far a car travels to get from each railroad to your warehouse?

Mr. WARRINGTON: We will give you that. We now offer the testimony of William Cooper Procter, in respect to what his father did. You remember you permitted that to be done, because of Mr. Procter's going away from the city.

Mr. MAXWELL: That is all right.

The CHAIRMAN: It is intended to show that he gave very little attention to the business, and that he would not be expected
1770 to be familiar with its details.

Mr. WARRINGTON: Yes, sir; that is all. We had telegraphed for a witness, Mr. Brown, to appear for the purpose of testifying on the subject about which Mr. McLeod has testified this morning, and we are now about to send a telegram asking him not to start, or if he has started we will try to intercept him on the road, because we think for the moment that Mr. McLeod's corrections will make it unnecessary to call Mr. Brown, but we reserve the right to do so. I want to reserve the right to take his deposition in the event of a mistake, or claim on our part of a mistake in anything that Mr. McLeod said this morning. I hope that Mr. McLeod could fix the time when we began business at Ivorydale.

Mr. MAXWELL: There is no objection to that.

Mr. WARRINGTON: We will try to agree with council on the facts, and if we do, we will write a stipulation and put it in; if we do not, I will ask leave to take his deposition. We now wish to offer a list of articles which have been reduced from one class to another, and so reduced in rates between the first and the nineteenth classifications, both inclusive. It is not quite completed. We have availed ourselves of the permission which the Commission gave to either
1771 side to call upon the statistical department of the Commission for information. As I stated we haven't it completed; we are down to "S," and there are about 275 articles here as we count them, and we think it would be safe to say that there will be at least 300 articles. I may say in stating this number that we may be mistaken in a small way, by reason of the fact that some articles are indexed in different ways. Rock salt, say, for illustration, appears twice, once as "Salt," "rock" and then again in the order of its name, as "Rock Salt."

The CHAIRMAN: It is a statement prepared comparing classification No. 1 with classification 19?

Mr. WARRINGTON: Yes, sir.

The CHAIRMAN: Designed to show how many articles in the meantime have been placed in a lower class?

Mr. WARRINGTON: Yes, sir; and so reduced in rate. I would like to offer this and have it marked.

The CHAIRMAN: It was prepared here?

Mr. WARRINGTON: Yes, sir; and we want to have that continued down and the additional sheets, when ready, attached, with your permission.

The CHAIRMAN: Very well. Let it be marked.

The same is hereto attched and marked Exhibit 61.

1772 Mr. WARRINGTON: So far as we can now recall this is all we wish to offer, in addition to what we have provided for, save and except the matter of net weight practice, if the court thinks that that ought to be taken up. If it shall become necessary, we feel that we would rather you would grant an order to that effect, so that when we argue this case we shall have everything before us that the other side claims to be pertinent, or which you may regard as useful. In that event we shall wish to offer some of the testimony or evidence that appears in the record of the old case, and we will point out the names of the witnesses to the other side, in case they take testimony, and we shall want to supplement that by some depositions. So our suggestion is that if the court feels that that ought to be done, or that an order ought to be made that you fix a time within which the testimony shall be completed. Our thought is that it ought to be done as soon after the close of the testimony here as possible, so that when we come to prepare our briefs we shall have the whole of the evidence taken, although it may not have been presented to you in a formal manner.

The CHAIRMAN: We could hardly be expected at this time to have satisfied ourselves as to the influence upon a proper
1773 decision of this case of the facts in regard to the net weight practice. I have rather understood the position of the complainants to be that it was a prevalent and recognized practice to ship and carry soap at net weights, a practice so prevalent and so generally recognized both by the soap manufacturers and the carriers as to make all interested persons aware that no matter what the classification provided, the rates would be applied on net weights, and not on gross weights. That I have understood to be the position of the complainant in this case.

Mr. WARRINGTON: Not that all may have actually known of it, but that they were chargeable constructively in view of the publicity of it.

The CHAIRMAN: Your claim is that the practice was prevalent and recognized to a degree which practically charged everybody with notice.

Mr. WARRINGTON: Yes, sir.

The CHAIRMAN: It occurs to me that the testimony which has so far been produced in this proceeding at least creates some doubt as to the extent to which that practice prevailed or was known. We could hardly be expected to determine now what impor-
1774 tance should be attached to that fact, and if we had a competent impression, it would hardly be suitable for us to dis-

close it. It may not be a controlling circumstance and yet quite a material one. Since it is claimed that the refusal of the Commission to grant a rehearing in the former case was based in part upon the assumption that in point of fact that that practice did prevail, and since it is now claimed by the carriers that that was erroneous and that was not the fact, it seems desirable, if the general question is at all important, as perhaps it is, that that subject should be further developed. It is left as the testimony now stands, in a rather unsatisfactory shape. I can understand that the complainant would still claim, notwithstanding the depositions that have been read by the defendants, that that practice was so prevalent and so well recognized as to amount to a general understanding that net weights should be applied. We understand the carriers to claim that that is not the fact; that so far as there was a practice of that sort it was local and individual and had the effect of giving certain shippers advantages that amounted to a discrimination. We want to get all the light we can on this question and to ascertain in that regard exactly, or as nearly as we can, to what extent that practice did prevail, whether it was so general or well under-
1775 stood as to be regarded as a common understanding, or whether the instances in which net weights were applied were individual and sporadic, or discriminations or not. So we are inclined to say that if either party desires to take further testimony on that subject they should have a reasonable time in which to do it.

Mr. WARRINGTON: I forgot to make one statement which I should like to have appear out of abundant caution. I do not concede that it is to open to them now to go into this, but that is a question of law and I would like to have your honors know that. We have another paper that had not reached me when we offered the list of articles which were changed from one class to another. This is a statement showing the changes which have taken place in grain rates by the all rail route, from Chicago to New York from January 1, 1890 to the present date. This is from your Auditor's Office, and we will ask that this be marked as an exhibit.

The same is hereto attached and marked Exhibit 62.

Mr. WARRINGTON: Now I think we have reached a point when we should like in your presence, to see if we can have a time fixed within reasonable bounds for the taking of this additional testimony.

The CHAIRMAN: Before we take up that matter, Mr. Warrington, we have another suggestion to make. It has occurred to some
1776 of us that the testimony on one branch of this case has been rather meagre, and might be further developed. Mr. Macdonald, for example, in his testimony gave a statement of a number of articles which are still carried at sixth class rates, which he said were no better entitled to be in sixth class than is soap. So far as I recollect, no testimony on that subject has been given by the complainant except the testimony of Mr. Macdonald. I do not recall that any witness for the defendant has gone into that subject except Mr. McLeod. You all know that this is to a

great extent a matter of comparison—all of these questions are largely matters of comparison; and may it not be useful to develop those aspects of this question a little further. If the articles which Mr. Macdonald names are entitled to be carried in the sixth class and soap is not, can the carriers furnish us with a little more information, or go further into the reasons, why those articles are entitled to sixth class and soap is not. On the other hand there appear to be a number of articles now in the sixth class, which it might be contended are entitled to go into the fifth class as is soap. And if that is not the fact what are the reasons for it. Now those are questions with which we are not very familiar. I assume that the carriers have reasons at least satisfactory to themselves why two articles which appear to have some considerable
1777 resemblance to each other are put in different classes, one in the fifth class and the other in the sixth class. I make that suggestion for your consideration, if you are disposed to go further in developing such facts.

Mr. COLSTON: We are disposed to give you all the information possible.

The CHAIRMAN: To repeat, the question comes up in this way: It was said "here are a lot of articles in the sixth class; you have taken out soap and put it in the fifth; why soap rather than something else." On the other hand the suggestion has been made that *that* they are articles better entitled to be in the sixth class than is soap. What are the reasons. It just occurs to us that some comparison of the fifth and sixth class articles and a further development of the reasons advanced by either side as to why one article should take fifth class and another article should take sixth class may be very useful to us.

Mr. MATTHEWS: I got the impression from what the Chairman said that it was understood that we went into that question only with Mr. Macdonald. I think the Chairman is in error there. We took the depositions of three grocers, who support Mr.
1778 Macdonald in regard to some articles referred to by him.

The CHAIRMAN: I think you are right, but I think I am right in saying that the only witness on defendant's side was Mr. McLeod.

Mr. MAXWELL: Mr. McLeod is the only witness who made a direct statement on that subject.

The CHAIRMAN: The general question may be considered from another point of view. We probably understand the general grounds upon which the complainant rests its case and the general ground upon which the defendants resist the claims made by complainant. Among the grounds advanced by the defendants is the necessity for larger revenue. The record shows that soap was taken from the sixth class and put in the fifth class, and so the question might be asked, why did you take soap and why not something else, or why soap and leave something else which it is claimed ought to be advanced if soap was advanced. It seems to be material in that aspect of the case. Conditions may have changed very much in ten years since the other case was tried. I mean the relative value of the articles

then compared or contrasted, the relative volume of traffic in those articles, the points of production and the methods of boxing
1779 and shipping may have materially changed in the meantime, so that the reasons then assigned may not be perfectly good at the present time. We do not want to put any unnecessary burden upon either of the parties to this case, and yet it has occurred to us that it is an aspect of this case of considerable importance and of undoubted materiality, which might be developed somewhat further than it has been.

Mr. MAXWELL: We will be very glad to do that.

The CHAIRMAN: (after discussion of the subject) Then it will be understood that further testimony will be taken with reference to the net weight practice and with reference to the reasons for separating soap from certain other articles or grouping soap with certain other articles for the purposes of classification.

The understanding is that you will have to the 1st of September to take these depositions, and if it is desired some member of the Commission can attend your hearings; that the complainant is to prepare and serve his brief on the defendants by the 15th of September, defendants to have 20 days to make reply; and the argument to be set thereafter as soon as will fairly accommodate the Commission and counsel, presumably about the middle of October.

1780 Mr. MAXWELL: I want to explain about this matter of changes in classification which have occurred between the first and nineteenth classifications. I understand this to be a fact that the *the* first classification was formulated or prepared in view of the passage of the Interstate Commerce Law and that the first three classifications, perhaps the first four, made a great many changes for the purpose of correcting errors which had occurred in the hurried preparation of the first classification.

The CHAIRMAN: Does that mean that a comparison between No. 1 and No. 19 is not fair?

Mr. MAXWELL: It is subject to that opinion. There were a great many errors at first.

Mr. BAYLESS: I want to enter an objection to this exhibit being competent in any way.

Mr. MAXWELL: We can work that matter in with the other depositions.

The CHAIRMAN: Mr. Macdonald, we want to ask you a few questions.

Mr. Macdonald resumed the stand.

The CHAIRMAN: Did we understand you to say that you divide this traffic up between these three roads so as to give each
1781 one about an equal share?

Mr. MACDONALD: No, sir; not exactly that; there is hardly any competition, though, about it. In dividing the business up we are partially governed in that by the terminals; that is, we want to reach certain terminals in different cities; some are more convenient for us than others. We have in that way a regular division of the business from which there is hardly ever any variation.

The CHAIRMAN: It was stated that these roads were highly competitive for your business and that either one of them can be the initial carrier to all principal destinations, and we understood Mr. McLeod to say that the traffic was about equally divided between the three roads.

Commissioner YEOMANS: How does it average up for a year?

Mr. MACDONALD: The Big Four gets a little bit the most; the others a little bit less. That is because the Big Four reaches more points.

The CHAIRMAN: What influences you in determining how this traffic shall be divided up?

Mr. MACDONALD: Well, that would require me to go back to what originally influenced me. The business has been going in the same channels for some years. We give these roads certain
1782 business. In that way there is practically no competition. The business is divided up on certain lines so that each road knows whether or not it gets the business for a particular point, and it would only be on rare occasions when it would not go in that way.

The CHAIRMAN: Practically the destination controls, then?

Mr. MACDONALD: Practically the destination controls. The Illinois Central terminal in Chicago is very much the most convenient for the wholesale trade; they wont accept any other terminal. So it is essential that we should ship our business for Chicago over the Big Four road.

The CHAIRMAN: Because that road uses the Illinois Central terminal?

Mr. MACDONALD: Yes, sir; and the same way in Philadelphia, where the Reading terminal has always been the most convenient terminal there, and that business has always gone by what is known as the White Line—the Big Four, Lake Shore, New York Central, Fall Brook and Reading. That business has gone that way for many years. At Baltimore, the Baltimore & Ohio road is the most convenient. The Boston business goes over the Erie road. As between those points there is no competition between the roads; we give the business regularly to one road or the other.

1783 The CHAIRMAN: And did you also say that since the 1st of January, 1896, that there had been no allowance to the I. & M. V. Railway Company greater in any case than fixed by the contract?

Mr. MACDONALD: Do I understand you to refer to what we have been pleased to call terminals in this case?

The CHAIRMAN: The allowance to the I. & M. V. Railway Company the share which that company gets out of the rate as you testified; has that railroad company received any more at any time than the amount fixed by the contract?

Mr. MACDONALD: Not for terminals; no, sir.

The CHAIRMAN: For anything?

Mr. MACDONALD: Do I understand you to refer to deviation from tariff rates?

The CHAIRMAN: I do not mean that; Or was the railroad always used as the instrumentality for cutting the rate?

Mr. MACDONALD: Yes, sir; that is, you will understand me to say, Mr. Chairman, admitting that to be the case that the accounts would be handled through the railroad.

Mr. MATTHEWS: I do not think Mr. Macdonald understood your honor's question; that is, as originally put.

The CHAIRMAN: It appeared here that there was a contract made with each of these three roads, which went into effect Janu-
1784 ary 1st, 1896, and which provided for certain allowance to be made to the I. & M. V. road based on tonnage. It also appeared that certain concessions from the rate had been made to Procter & Gamble at times prior to January 1st, 1899. Now, you say if anything of that kind occurred it was all handled through the I. & M. V. Railway Company?

Mr. MACDONALD: Simply as a matter of keeping our account.

The CHAIRMAN: As a matter of fact, it was handled that way, then?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: Would that operate to swell the apparent receipts of the I. & M. V. Railway Company?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: But for the terminal service proper, contemplated by the contract, there has been no allowance by either company other or greater than the allowance fixed by that contract?

Mr. MACDONALD: That is correct.

Mr. MATTHEWS: Didn't I understand your honor to ask him first whether prior to 1896 there had been a greater or less allowance than began in the contract of 1896?

The CHAIRMAN: No, sir; I did not mean to inquire about anything before 1896.

1785 Mr. COLSTON: Is New York a common point of shipment from Ivorydale over these roads, the Big Four, the C. H. & D., and the B. & O. S. W.?

Mr. MACDONALD: Do you mean can we ship over any of those roads?

Mr. COLSTON: Over one just as well as the other?

Mr. MACDONALD: Provided the terminal is just as satisfactory and convenient. We prefer the Baltimore & Ohio there and use that road.

Mr. COLSTON: If there is any advantage in favor of any road, it is in favor of the B. & O. S. W.?

Mr. MACDONALD: That is the road we give the business to. We like the Terminal the best.

The CHAIRMAN: Your New York shipments go by the B. & O.?

Mr. MACDONALD: Yes, sir.

Mr. COLSTON: Do you mean that last year you shipped everything to New York over the B. & O.? If you did, I would like to have you prepare a statement and submit it to this Commission of your shipments over the three roads to common points that can be reached by any one of them. I have selected New York, and I want you to do that to show whether your statement is correct and that you are not governed by caprice, as Mr. Procter said.

1786 Mr. MACDONALD: Answering Mr. Colston and also making sure that the Chairman understands me, there would be exceptions to that rule. I have in mind Pittsburg——

The CHAIRMAN: He asks you about New York—if all goes to New York by the B. & O.

Mr. MACDONALD: I think 99 cars out of 100 would go that way. As to the one car there might be a reason for shipping it another way; somebody might request it.

The CHAIRMAN: Does that not answer your question, Mr. Colston? You ought to be satisfied with that.

Mr. COLSTON: I am challenging his statement, the correctness of it, that in the distribution of freight among these three roads there is really no competition among them, but that he is governed largely by the destination, and I thought the way to get that was to get the shipments to these eastbound points, some common points, and I selected New York.

The CHAIRMAN: Will you state, Mr. Macdonald, that there have been no rebates direct, or of any sort, since January, 1899, on your business.

Mr. MACDONALD: As far as it applies to roads in this territory, there have not been.

1787 The CHAIRMAN: You mean by that Official Territory?

Mr. MACDONALD: Official Territory.

The CHAIRMAN: And does that include all the roads that are parties defendant in this proceeding?

Mr. MACDONALD: Yes, sir.

The CHAIRMAN: There have been no deviations from the open published tariff on your business by any of these roads since January 1st, 1899?

Mr. MACDONALD: That is correct so far as my recollection goes.

The CHAIRMAN: You would know the fact was otherwise?

Mr. MACDONALD: Yes, sir; that is correct.

Commissioner CLEMENTS: What you say means that all these three roads are in the Official Classification, but do you get it from some connecting line rather than the initial road?

Mr. MACDONALD: I referred to all roads in the Official Classification territory.

Commissioner CLEMENTS: These three are in it?

Mr. MACDONALD: Yes, sir.

Commissioner CLEMENTS: All the roads connecting with your plant are in that association?

Mr. MACDONALD: Yes, sir.

1788 Commissioner CLEMENTS: So if you had received anything in the way of rebates or concessions, you must have received it from some road other than the initial road.

Mr. MACDONALD: From some road out of this territory entirely, Mr. Commissioner.

Mr. WARRINGTON: Mr. McLeod said that he had been solicited for rebates. Did you ever solicit him or anybody else for a rebate?

Mr. COLSTON: At what time?

Mr. WARRINGTON: Any time.

Mr. MACDONALD: I would like to claim my exemption under the law and make a statement in regard to that.

The CHAIRMAN: Do you want to make any further statement in that connection, Mr. Macdonald?

Mr. MACDONALD: I feel, Mr. Chairman, that I perhaps have not left a correct impression in your minds; that is all. To correct it I must claim my exemption and make some further admissions.

Mr. WARRINGTON: I do not care to press a matter of this kind; only a witness went on here and volunteered a statement that he had been solicited. One of you gentlemen on that side asked him if he did that in obedience to solicitation. I do not see what it has
1789 to do with this case, and I am sure we have enough in it without going into something else.

The CHAIRMAN: We do not desire to ask him any further questions, but if he desires to make a further statement or explanation, we will be bound to hear it.

Mr. WARRINGTON: It is fair for counsel to be frank in matters of this kind. I do not think this has anything to do with the case in hand and I will not detain anybody to ask him a question.

The CHAIRMAN: We think it is a matter resting with Mr. Macdonald, whether he wants to make any other answer to questions asked. We are content to leave the matter where it is.

Mr. MACDONALD: May I consult with counsel a moment?

The CHAIRMAN: Certainly.

Mr. MACDONALD (after consulting counsel): Mr. Chairman, I think I will be content with this one further statement, and that is that business is never diverted, and has not been diverted, from one of these lines to another on account of the rate.

Mr. COLSTON: Have you diverted any business from any of those lines since you have been here?

Mr. MACDONALD: No, sir.

1790 Mr. COLSTON: Are you sure?

Mr. MACDONALD: No, sir, I have not.

Mr. COLSTON: None from the Baltimore & Ohio Southwestern?

Mr. MACDONALD: No.

Mr. WARRINGTON: Just tell the Commission what has happened to your business.

Mr. MACDONALD: Our business has fallen off very materially.

Mr. COLSTON: I mean diverted from the Baltimore & Ohio Southwestern, for example, to any other railroad or railway, or carrier?

Mr. MACDONALD: No, sir.

Commissioner CLEMENTS: What do you mean by diverted—to quit shipping by that road and ship over another?

Mr. COLSTON: Yes, sir; quit shipping material or goods that he had been in the habit of shipping over that line and give it to some other line since we have been engaged in this proceeding. He says he has not.

Commissioner CLEMENTS: What materiality has that?

Mr. COLSTON: He comes on the stand now and represents to the

Commission that there is perfect fairness and equality as
1791 between these roads and practically no competition; therefore no bidding or auctioning by these roads for their business.

Mr. MACDONALD: There is not, Mr. Chairman. That is exactly what I wanted you to understand.

Mr. COLSTON: Could you state to the Commission during the five months covered by the statement you have submitted here showing the advance in the cost of transportation of soap of Procter & Gamble Co. since the increase in classification, what amount you have shipped over other lines that carry to points in the Official Classification territory, the Chesapeake & Ohio and the Erie?

Mr. MACDONALD: It would be very easy to show. I have not the statement with me.

Mr. COLSTON: Is it considerable?

Mr. MACDONALD: We give the Erie considerable business.

Mr. COLSTON: What proportion, is what I want to get at, for that same period of time. Your point was to make it up as between these three roads.

Mr. MACDONALD: I think the Erie got something like 15 per cent. of the business.

Mr. COLSTON: Did the Chesapeake & Ohio get any?

1792 Mr. MACDONALD: Very small.

Mr. COLSTON: Not hardly worth taking into account?

Mr. MACDONALD: Hardly.

Mr. WARRINGTON: I think if you could state the percentage that your business has fallen off in the last few months you could ease the minds of these gentlemen.

Mr. MACDONALD: Somewhere between 35 and 50 per cent.

Mr. COLSTON: That was stated before.

Mr. WARRINGTON: Not in amount.

The CHAIRMAN: Is there anything further to be asked of Mr. Macdonald?

Mr. MAXWELL: Yes, sir. Can you tell this Commission that you never gave to one line over another of these roads any preference in freight on account of the rate?

Mr. MACDONALD: That is correct so far as our soap business is concerned.

Mr. MAXWELL: When you cut rates, how did you get the cut rates.

Mr. MACDONALD: I will have to claim an exemption to answer that question. Do you desire to press it?

Mr. MAXWELL: Yes; I desire to press it.

Mr. MACDONALD: It has never been our custom in matters of that kind to make any competition between the roads. It has never affected the division of business between the roads.

1793 The way the thing is handled is this—we have been very careful about it—we never go into the situation when it first starts to be bad. We let a number of months pass before we take action. Then, it has been our custom to present the rate conditions to the railroad company, which they are familiar with and with which we are familiar, and ask them if they do not think our busi-

ness is entitled to protection. We do not do that when the trouble starts, but wait a reasonable length of time to see if conditions will not improve. I have always been careful in presenting these conditions to the railroads to make it clear to them that whatever they did would not affect the traffic they would get. That the matter was entirely in their hands to adjust as they pleased.

Mr. MAXWELL: Did you make these suggestions to the railroads?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: To what railroads?

Mr. MACDONALD: To all of them at different times.

Mr. MAXWELL: Were they soliciting freight from you when you made this suggestion?

Mr. MACDONALD: Yes, sir, in a way they were. We were
1794 talking over the business we were giving that company.

Mr. MAXWELL: What would you say to any man you approached?

Mr. MACDONALD: I would merely tell him that rate conditions were such and have been such for a number of months and that we thought our business was entitled to some protection and he in every instance I can recall would entirely agree with me. I would say to him that he could do as he pleased about it and it would not affect the proportion of our business he would receive.

Mr. MAXWELL: In other words, you took pains to tell every freight man you approached that it did not make any difference whether he gave you a rate or not he would get the freight?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: What traffic man did you state that to?

Mr. MACDONALD: Mr. McLaughlin was one and Mr. McLeod another.

Mr. MAXWELL: You made the statement that it did not make any difference whether they cut the rate or not they would get the freight?

Mr. MACDONALD: I did not say "cut the rate," I said "meet
1795 the conditions."

Mr. MAXWELL: Did you mean "cutting the rate" by "meeting the conditions?"

Mr. MACDONALD: No, I meant meeting the conditions.

Mr. MAXWELL: What does that mean if it does not mean cutting the rate?

Mr. MACDONALD: I do not think it does. Cutting the rate, I think, would refer more especially to some particular transaction. I never took up particular business in these conversations. It referred to all the competitive business we had, and I think meeting conditions expresses that better.

Mr. MAXWELL: What does it mean if it means anything else than giving a rate below the tariff filed with the Commission?

Mr. MACDONALD: I have no knowledge as to whether the rates given me were filed with the Commission or not.

Mr. MAXWELL: What was your purpose in going around to these gentlemen and telling them that there was not the slightest difference

to them whether they met the conditions or not they were to get the freight anyhow?

Mr. MACDONALD: My purpose was to have our business put
1796 on a basis that I knew every other business in the country was on.

Com'r YEOMANS: What was that basis?

Mr. MACDONALD: It was a basis better than the tariff rate.

Com'r YEOMANS: Some secret rate?

Mr. MACDONALD: Yes, sir.

Com'r YEOMANS: A secret rate is a cut rate, is it not?

Mr. MAXWELL: What I want to know is what was your purpose in assuring each of these gentlemen when you approached him to "meet conditions" as you say, that he would get the freight whether he cut his rate or not?

Mr. MACDONALD: I thought he ought to meet conditions, but it was not my purpose to divert business.

Mr. MAXWELL: I want to know why you took pains to express to him the assurance that he would get the business whether he met conditions or not.

Mr. MACDONALD: Because I have found from a great many years' experience that it pays to be square with the railroad companies and I have always attempted to be that.

Mr. MAXWELL: That is the reason you told him?

Mr. MACDONALD: Yes, sir.

1797 Mr. MAXWELL: Did you ever have any conversation with them as to the extent to which they would meet conditions?

Mr. MACDONALD: That would be a matter of discussion between us.

Mr. MAXWELL: Would there be a parley as to how much the cut would be?

Mr. MACDONALD: Not usually. We usually got together very quickly. There was not usually much difficulty about that.

Mr. MAXWELL: How would you get together? You would suggest the condition?

Mr. MACDONALD: The suggestion usually came from the railroads?

Mr. MAXWELL: It usually came from the railroads?

Mr. MACDONALD: From the railroads, yes, sir.

Mr. MAXWELL: You went to them, though, for the purpose of assuring them that it would not make the slightest difference whether they cut the rate or not they would get the freight?

Mr. MACDONALD: I already said that I went to them with the idea that they ought to meet conditions. I have not denied that. But my statement was that it would not affect their business in
1798 any way and it did not.

Mr. MAXWELL: And you told them so?

Mr. MACDONALD: Yes, sir.

Mr. MAXWELL: Did you make the suggestion about the extent of the cut?

The CHAIRMAN: Pardon me, Mr. Maxwell, but is it worth while to pursue this any further?

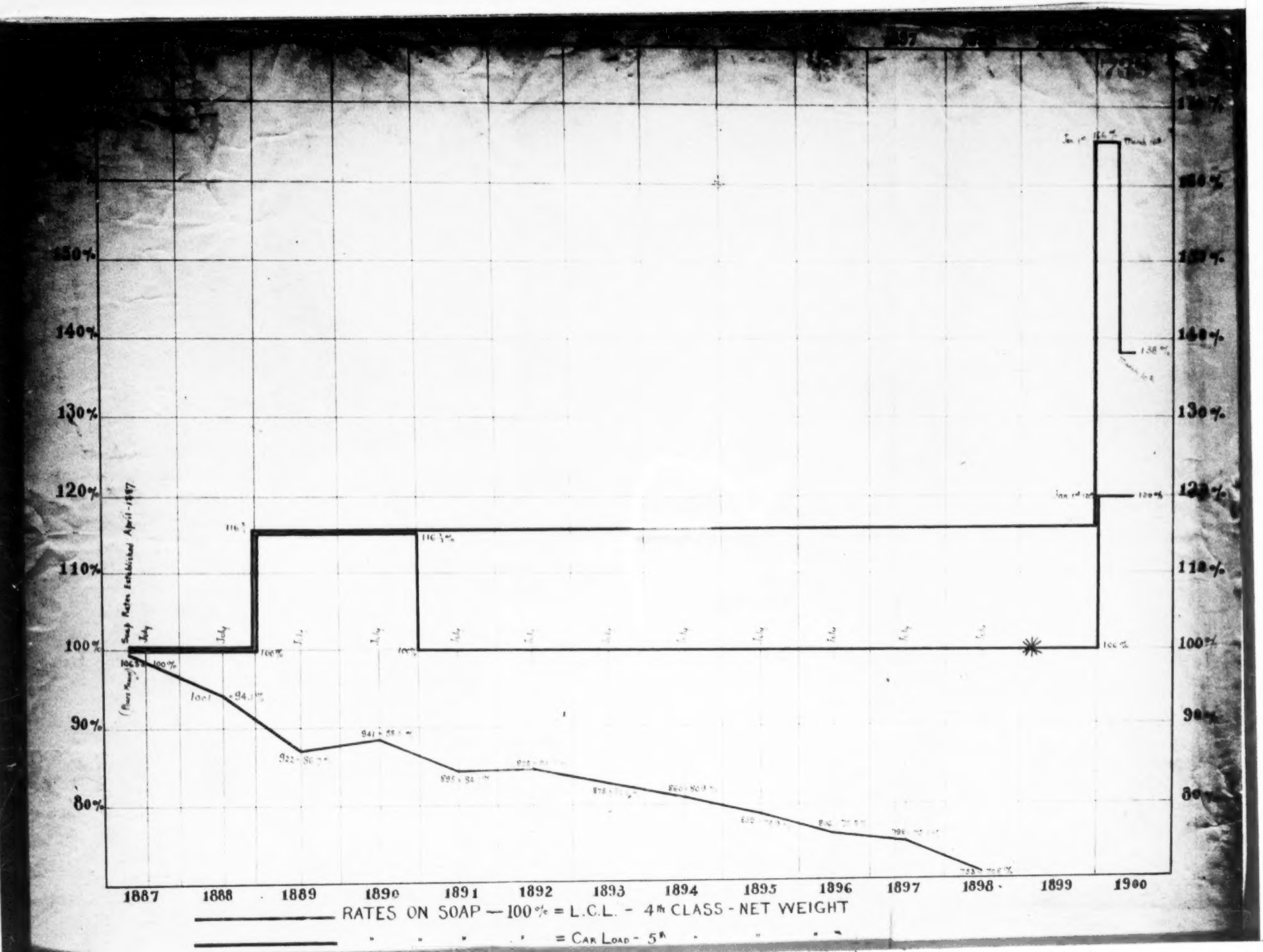
Mr. MAXWELL: I do not know. If your Honors think not I will not.

The CHAIRMAN: Do you desire to make any further explanation or statement, Mr. Macdonald?

Mr. MACDONALD: That is all.

The CHAIRMAN: If there are no further questions to be asked Mr. Macdonald he will be excused. Do you gentlemen desire to call any other witnesses at this time. If not, the hearing is adjourned.

At 12:30 p. m., Friday, June 29, 1900, the Commission adjourned.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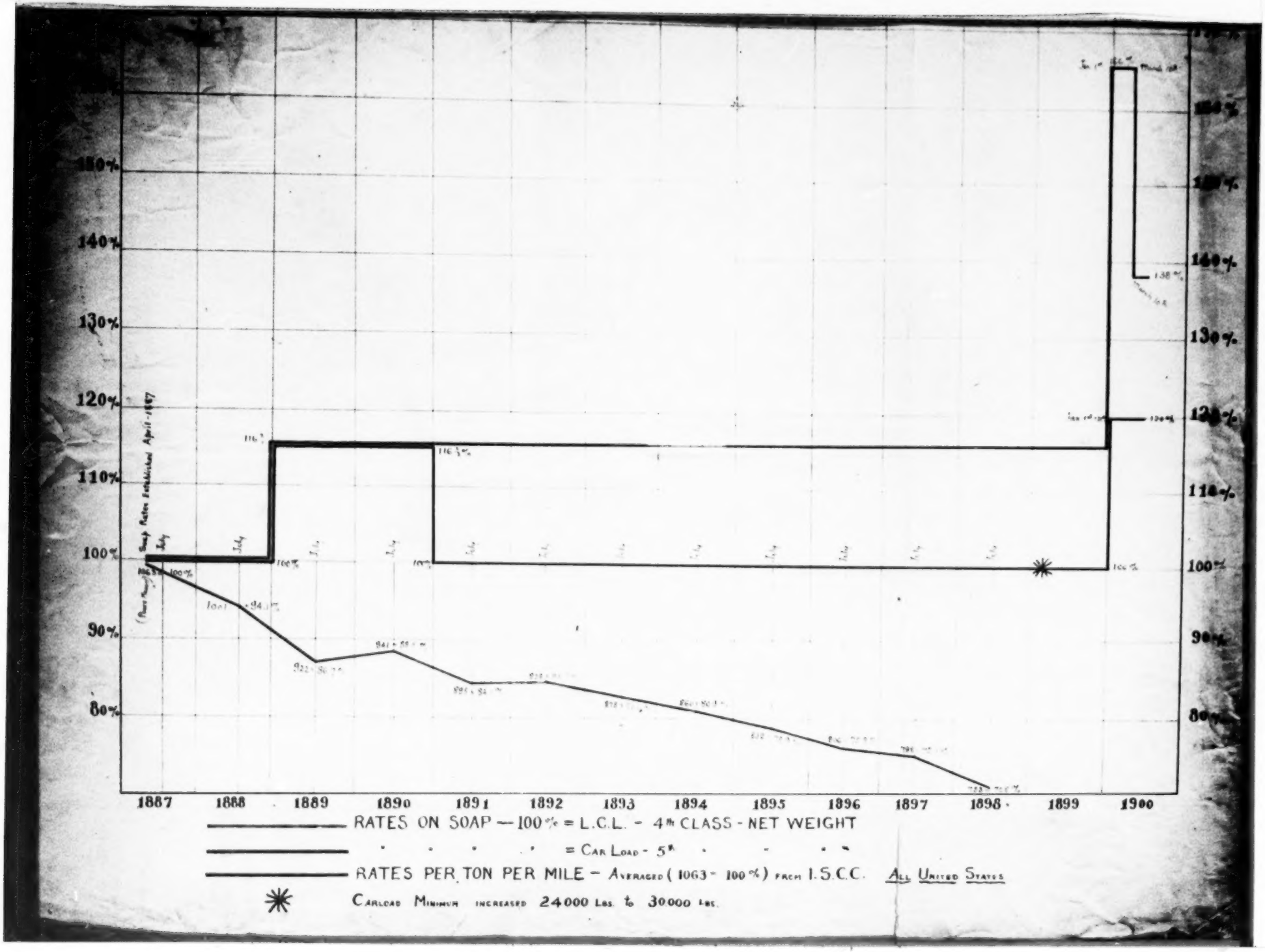
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= CAR LOAD - 5th
RATES PER TON PER MILE — AVERAGED (1063 - 100%) FROM I.S.C.C. ALL UNITED STATES
CARLOAD MINIMUM INCREASED 24000 Lbs. to 30000 Lbs.

Classifications and Commodity Rates	Soap	Candles	Rice	Starch	Cereal Products	Coffee	Sugar	Coffee Green	Coffee roasted	Canned Goods	Glucose	Dried Fish Smoked	Fish pickled or salted Nos in packages
											COMMODITY RATES		
Official Carloads	5	5	6	5 GRAIN RATE	6	5	5	5	5	5	5	5	5
" Less than Do	20 % BELOW 3	20 % BELOW 3	4	20 % BELOW 3	5	20 % BELOW 3	20 % BELOW 3	20 % BELOW 3	20 % BELOW 3	20 % BELOW 3	4	3	4
Western Carloads	5	5	5	GRAIN RATE 5	5	SEE GREEN	5	5	4	5	5		5
" Less than Do	4	4	4	3	4	AND ROASTED	4	4	3	4	4		4
Southern Any quantity	6	3	6			Do					5	4	5
" Carloads				5	6	Do	5	5	4	5			
" Less than Do				3	5		5	4	3	3			
Texas Cents to Dallas	61	77	61	70			60	77		55	61	77	
California - San Francisco	75	$1.00	60 from Gulf 75	$1.00	80			80		95	85	$1.20	
Southern - Cents to New Orleans	6th class 39												
" " Atlanta	6th class 46												
Southern / Commodity in effect	Cents to New Orleans 27	27		27				39		27			
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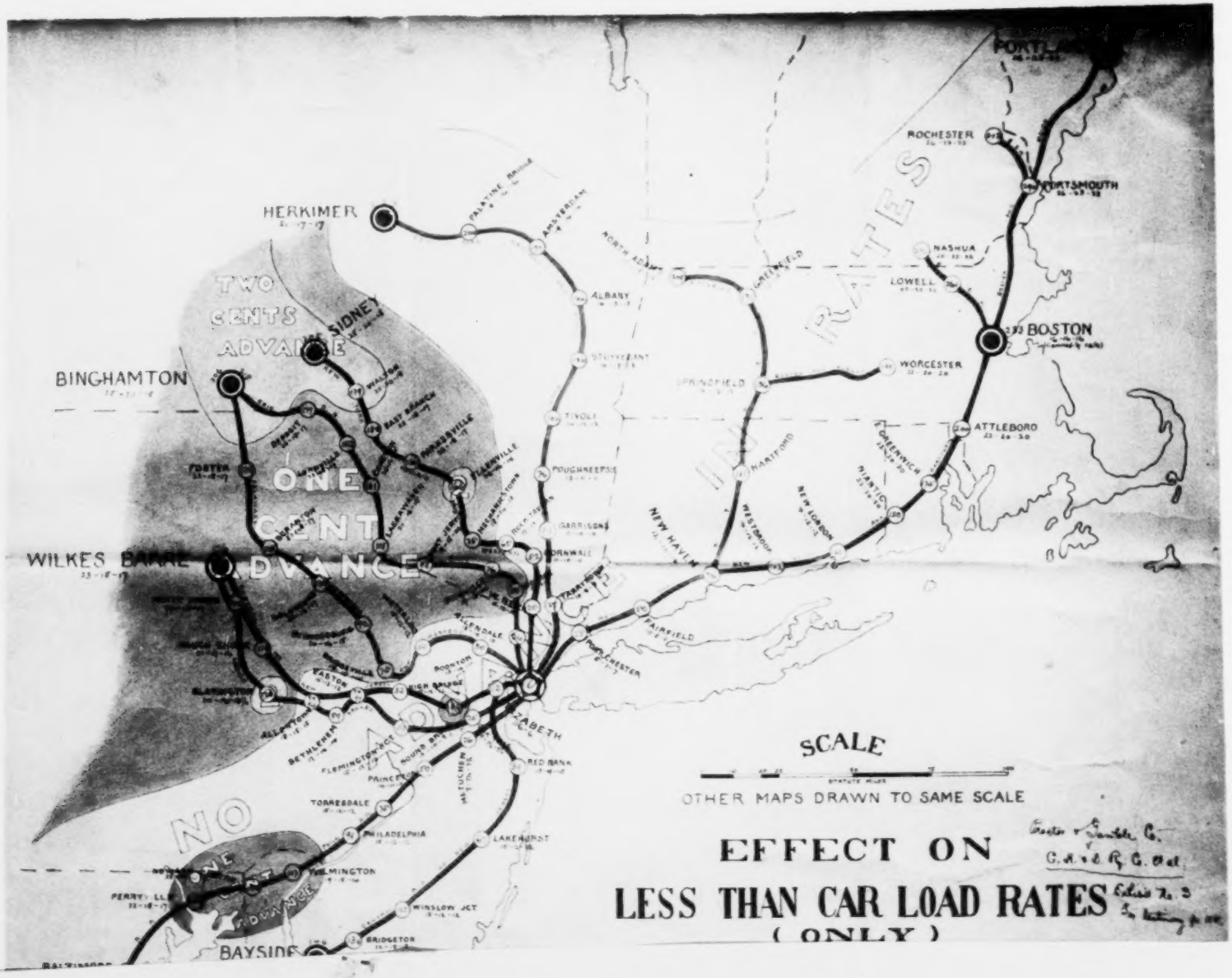
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ALBANY
STUYVESANT
TIVOLI
POUGHKEEPSIE
GARRISONS
CORNWALL
SPRINGFIELD
HARTFORD
NEW HAVEN
FAIRFIELD
ALLENDALE
BOONTON
HIGH BRIDGE
EASTON
BETHLEHEM
FLEMINGTON JCT
PRINCETON
TORRESDALE
PHILADELPHIA
WILMINGTON
PERRYVILLE
WINSLOW JCT
BRIDGETON
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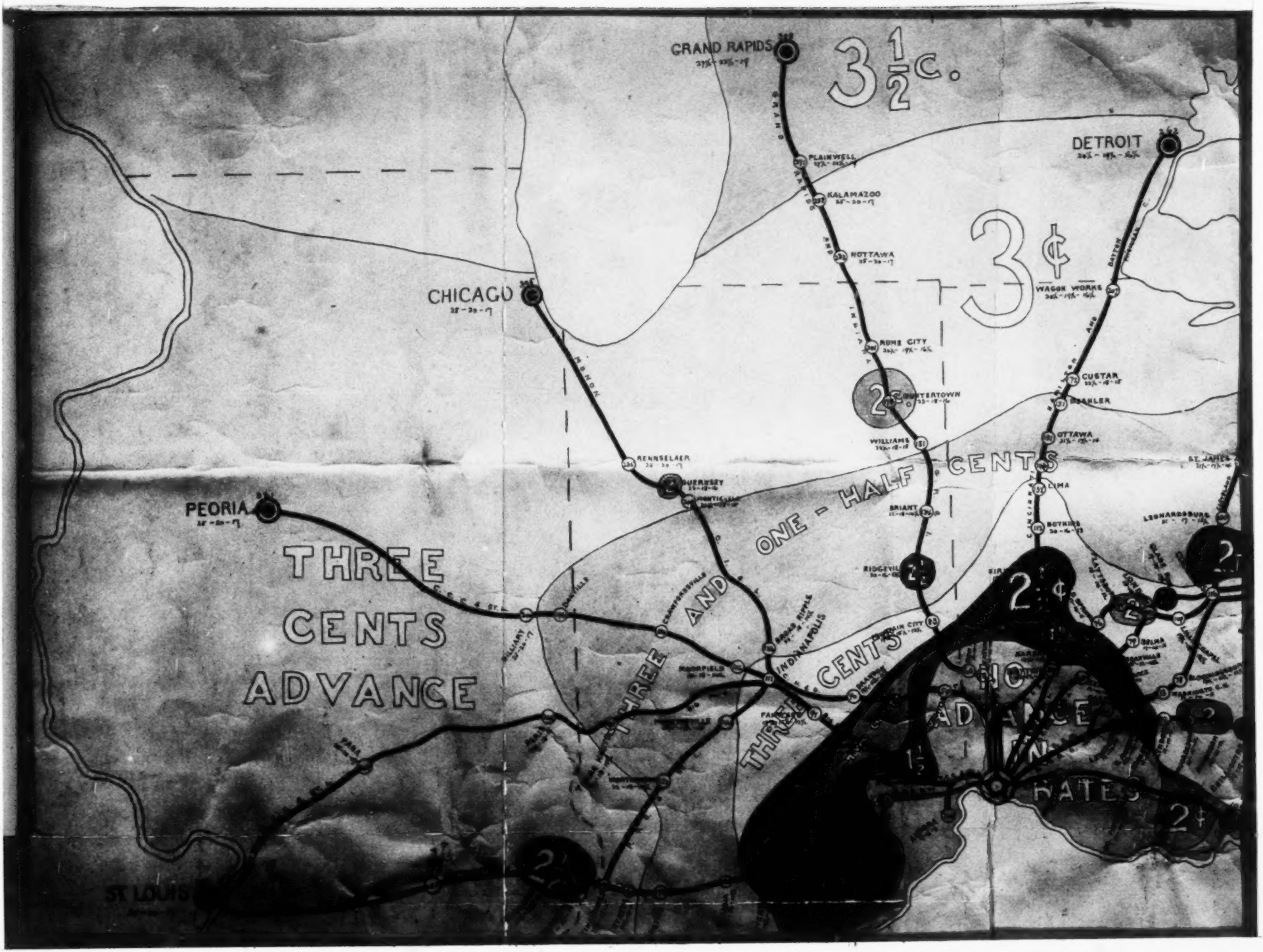
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BRIANT
BOTKINS
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THREE CENTS ADVANCE
THREE AND ONE - HALF CENTS
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INDIANAPOLIS
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NO ADVANCE IN RATES

DETROIT
PLAINWELL
KALAMAZOO
NOTTAWA
CHICAGO
3¢
WAGON WORKS
ROME CITY
CUSTAR
DESHLER
WILLIAMS
OTTAWA
RENNSELAER
PEORIA
THREE CENTS ADVANCE
ONE - HALF CENTS
THREE AND
THREE CENTS
INDIANAPOLIS
LIMA
BOTKINS
ST. JAMES
LEONARDSBURG
RIDGEVILLE
2¢
NO ADVANCE
RATES
2¢

3½c.
DETROIT
PLAINWELL
KALAMAZOO
NOTTAWA
3¢
WAGON WORKS
ROME CITY
HUNTERTOWN
CUSTAR
DOUGHLER
OTTAWA
WILLIAMS
RENNSELAER
GUERNSEY
LIMA
BOTKINS
BRIANT
RIDGEVILLE
ONE - HALF CENTS
THREE AND
THREE CENTS
INDIANAPOLIS
NO ADVANCE IN RATES
CLEVELAND
NOTTINGHAM
NEW LONDON
GREENWICH
ST. JAMES
LEONARDSBURG
WHEELING
PARKERSBURG
PORTSMOUTH

1803

EXHIBIT No. 20.

(See Page 575 of Testimony, Page 1192 of Transcript.)

PROCTOR & GAMBLE CO.
v.
C., H. & D. RY. CO. ET AL.

Locomotives.

Price per Locomotive.

Class.	1900.	1899.	1898.
H4	$17,350.00	$12,350.00	$12,462.00

Increase 1900 over 1899 ..... 40 5/10%
" " " 1898 ..... 39 1/10%

Locomotives to be Rebuilt in 1900.

Northwest System	50
Southwest "	40
Total	90

Increase 1900 over 1899 90 Locos. at $5,000 ..... $450,000.00
" " " 1898 90 " " 4,888 ..... 439,920.00

1804

EXHIBIT No. 21.

(See Testimony, Page 577, Page 1194 of Transcript.)

Prices of Freight Cars Rebuilt by Outside Car Companies.

Class of cars.	1900.	1899.	1898.	Increase 1900 over—	
				1899.	1898.
X H	$879.00	$607.17	$588.52	44 8/10%	49 4/10%
G I	793.02	570.00	520.78	39 1/10	52 3/10
G K	793.14	525.85	.....	50 8/10	
F K	749.48	499.65	.....	50	
G N	795.00	571.04	507.00	39 2/10	40 2/10
G L	1,180.84	878.26	837.00	34 5/10	41 1/10

Exhibit No. 22.

(See Page 578 of Testimony, page 1198 of Transcript.)

Cost of Material, Years 1897, 1898, 1899, *and* 1900.

Classification.	1900.	1899.	1898.	1897.	1900 over 1899.	1900 over 1898.	1900 over 1897.
Axles, Driving	$ .045	$ .04	$ .04	$ .04	12 5-10 %	12 5-10 %	12 5-10 %
Axles, Car	.0335	.0265	.016	.16	26 4-10	65 6-10	109 4-10
Castings, Common	.021	.013	.013	.13	61 5-10	61 5-10	61 5-10
Castings, Malleable	.0325	.0265	.024	.24	22 6-10	35 4-10	35 4-10
Castings, Steel							
Bronze	.17	.18	.1225	.112	5 5-10 *	38 8-10	51 8-10
Copper	.165	.1735	.1245	.11125	4 9-10 *	32 5-10	39 3-10
Flues, Boiler	.20	.1625	.135	.135	23 1-10	48 2-10	48 2-10
Pipe, Gas, Iron	.0675	.0635	.0334	.0281	5 9-10	102 1-10	140 2-10
Iron, Bar	2.40	1.75	1.05	1.10	37 1-10	128 6-10	118 2-10
Springs (see below)							
Steel, Boiler	.0315	.0325	.0175	.017	3 1-10 *	80	85 3-10
Steel, Fire Box	.035	.035	.015	.015		55 5-10	55 5-10
Tires, Locomotive	.05	.045	.04	.04	11 1-10	25	25
Wheels, Car	8.00	8.00	5.25	5.25		52 4-10	52 4-10
Yellow Pine	21.00	21.00	21.00	16.00			31 2-10
White Pine Roofing, Spec. No. 1	28.00	28 00	28.00	24.00			16 7-10
White Pine Roofing, Spec. No. 2	25.00	25.00	25.00	20.00			25
White Pine Roofing, Spec. No. 3	20.00	20.00	20.00	16.00			20
Oak	20.00	17.00	17.00	16.00	15	15	20
Spikes	2.65	1.50	1.45	1.50	76 7-10	82 8-10	76 7-10
Nails, Cut	2.50	1.70	1.13	1.25	47 1-10	121 2-10	100
Nails, Wire	3.275	2.85	1.40	1.55	14 9-10	133 9-10	111 3-10
Nuts	3.40	2.10	1.40	1.81	61 9-10	142 9-10	87 8-10
Oil, Headlight	10.14 c.	6.37 c.	5.785 c.	6.50 c.	59 2-10	75 3-10	56
Oil, Mineral Seal	10.42 c.	7.59 c.	6.90 c.	6.55 c.	37 3-10	51	59 1-10
Oil, Summer Axle	8.05 c.	5.18 c.	5.90 c.	6.51 c.	55 4-10	36 4-10	23 7-10
Oil, [illegible] Fluid	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Oil, Lard	45.00 c.	36.00 c.	35.00 c.	27.00 c.	25	28 3-10	103 7-10
Oil, Lard Extra	57.00 c.	36.375 c.	51.00 c.	29.00 c.	56 7-10	11 8-10	96 6-10
Springs, Half Elliptic	.05⅞	.05⅞	.05	.05		15 6-10	15 6-10
Springs, Driving	.07½	.07½	.06½	.06½		15 4-10	15 4-10
Springs, Engine Truck	.07½	.07½	.06½	.06½		15 4-10	15 4-10
Springs, Quadruple	.05½	.05½	.05½	.05½		12	12
Springs, Elliptic	.05⅛	.05⅛	.05⅛	.05⅛		12	12
Springs, H-25	.98	.98	.47	.47		106 4-10	106 4-10
Springs, H-59	4.40	4.40	2.50	2.50		76	76
Springs, H-20	.45	.45	.10	.10		350	350
Springs, H-24	1.32	1.32	.57½	.57½		129 6-10	129 6-10
Springs, H-22	2.48	2.48	1.10	1.10		125 5-10	125 5-10
Springs, Frogs	45.60	31.40	28.85	26.95	45 2-10	58 1-10	69 2-10

Figures with the asterisk after them show decrease and without it show increase.

1806 EXHIBIT No. 23.

(See Testimony, page 579, p. 1196 of Transcript.)

To Fill Vacant Numbers in Freight Car Equipment.

	Price per car.		
	1900.	1899.	1898.
Average Cost—All Cars	$725.00	$635.00	$568.00

Increase 1900 over 1899 ..... 14 2–10 %
Increase 1900 over 1898 ..... 27 6–10 %

Cost of Cars to be Rebuilt in 1900.

Northwest System	1526
Southwest System	567
Total	2093

2093 Cars at $725.00—1900	$1,517,425.00
2093 Cars at $635.00—1899	1,329,055.00
2093 Cars at $568.00—1898	1,188,824.00
Increase 1900 over 1899	188,370.00
Increase 1900 over 1898	328,601.00

1807 EXHIBIT No. 24.

(See Testimony, page 584, p. 1201 of Transcript.)

Steel Rails.

	Price per ton.		
	1900.	1899.	1898.
Average	$33.00	$18.00	$19.00

Increase 1900 compared with 1899 ..... 83 3–10 %
Increase 1900 compared with 1898 ..... 73 7–10 %

Consumption in 1900.

Northwest System	15,000 Tons.
Southwest System	25,000 Tons,
Total	40,000 Tons.

40,000 Tons 1900 at $33.00	$1,320,000.00
40,000 Tons 1899 at $18.00	720,000.00
40,000 Tons 1898 at $19.00	760,000.00
Increase 1900 over 1899	600,000.00
Increase 1900 over 1898	560,000.00

1808 EXHIBIT No. 25.

(See Testimony, page 584, p. 1201 of Transcript.)

Average Price of ¾ Coal, Years 1900, 1898, 1897, f. o. b. Cars at Mines.

Year 1900	$1.10
Year 1899	0.85
Year 1898	0.80
Year 1897	0.75
Increase 1900 over 1899	29 4–10 %
Increase 1900 over 1898	37 5–10 %
Increase 1900 over 1897	46 7–10 %

1809 EXHIBIT No. 26.

(See p. 662 Testimony, p. 1279 of Transcript.)

Cost per Unit of the Principal Items of Material Used in Freight Car Construction, Pennsylvania Railroad.

Items.	Year.			Percentage of increase for 1900 over—	
	1898.	1899.	1900.	1898.	1899.
Yellow pine .....per M ft..	$18.00	$18.50	$24.00	33.3	29.7
Barn Pine..... " ..	18.00	18.50	22.00	22.2	18.9
White Pine Roofing. " ..	20.50	22.00	27.00	31.7	22.7
White Pine Siding.. " ..	30.40	31.40	37.00	21.7	17.8
Hemlock. .... " ..	12.00	12.75	18.56	54.2	45.1
Oak .. .. " ..	18.50	18.50	21.50	16.2	16.2
Steel Bolsters—Body,...each..	14.25	17.57	26.16	83.6	48.9
Steel Bolsters—Truck... " ..	15.53	22.32	27.98	80.2	25.4
Bar iron..... per lb..	.01 2-10	.01 4-10	.02 4-10	60.0	92.0
Iron Pipe. .... " ..	.03	.03 5-10	.08	166.7	128.6
Iron Castings..... " ..	.01 1-10	.01 2-10	.01 8-10	63.6	50.0
Malleable Iron Castings " ..	.02½	.02½	.03 1-10	24.0	24.0
Steel Followers... ... each..	.25	.25	.42	68.0	68.0
Springs, H—24..... " ..	.56	.50	1.23	119.6	146.0
Turnbuckles. ..... " ..	.28	.29	.35	25.0	20.7
Nails .. .. " ..	.01 2-10	.01 4-10	.03	150.0	114.3
Screws ....per gross..	.15	.31	.40	166.7	29.0
Nuts—Square. .....per lb..	.03 3-10	.03 3-10	.06 3-10	90.9	90.9
Plate Washers ..... " ..	.01 8-10	.01 9-10	.03 7-10	105.6	94.7
Chain.. .. .. " ..	.02 4-10	.02 6-10	.05 4-10	125.0	107.7
Galvanized Iron Roofs..each..	12.25	12.25	20.50	67.3	67.3
Striking Plates.....per lb..	.01 3-10	.01 4-10	.02 9-10	123.1	107.1
Steel Axles..... .....each..	7.94	13.78	23.40	194 7	69.8
Wheels—33" Cast Iron.. " ..	4.54	4.72	9.00	98.2	90.7
Linseed Oil.....per gallon..	.31	.34	.60	93.5	76.5
Black Asphaltum.. " ..	.42	.42	.55	31.0	31.0
Metallic Paint.... ....per lb..	.02 2-10	.02¼	.02 8-10	27.3	24.4

Office General Sup't Motive Power, Altoona, Pa., June 12, 1900.

1810 EXHIBIT No. 26, C 1.

Cost of Freight Equipment Cars.

Built at Outside Shops.

Kind.	Year.			Percentage of increase, 1900, over	
	1898.	1899.	1900.	1898.	1899.
Box cars, Class "Xh"	$588.52	$607.17	$879.00	49.4	44.8
Gondolas, Class "Gi"	520.78	570.00	793.02	52.3	39.1
Gondolas, Class "Gk"	.....	525.85	793.14	....	50.8
Gondolas, Class "Gn"	567.00	571.04	795.00	40.2	39.2
Gondolas, Class "Gl"	837.00	878.26	1,180.84	41.1	34.4
Flat Cars, Class "Fk"	.....	499.65	749.48	.....	50.0

Built at Altoona Shops.

Box cars, Class "Xh"	$590.99	$615.59	$842 39	42.5	36.8
Gondolas, Class "Gi"	502.54	515.50	723.50	44.0	40.4
Gondolas, Class "Gk"	.....	528.75	712.00	.....	34.7
Gondolas, Class "Gn"	.....	533.62	725.00	....	35.9
Flat cars, Class "Fk"	505.25	509.10	715.00	41.5	40.4
Gondolas, Class "Go"	.....	.....	713.91		
Stock, Class "Ke"	496 53	509.13	691.50	39.3	35.8
Refrig'r, Class "Rd"	807.44	825.50	1,090.00	35.0	35.0

Office General Supt. Motive Power, Altoona, Penna., June 12, 1900.

1811 EXHIBIT No. 26, C 2.

Increased Charge to Expenses in 1900, *Due to Increased Cost of Freight Equipment Cars to be Built to Fill Vacancies.*

1900.

2,400 Cars to be built—Average cost, $725.00 each equals $1,740,000.00.

Average cost per car, year 1898, was $521.25 each, or 39 1/10 %, making an increased expenditure of $489,000.00.

Office General Supt. Motive Power, Altoona, Pa., June 12, 1900.

1812

EXHIBIT No. 27.

(See P. 670, Testimony, P. 1287 of Transcript.)

Cost Per Unit of the Principal Items of Material Used in Locomotive Construction, Pennsylvania Railroad.

Items.		Year.			Percentage of increase, 1900 over	
		1898.	1899.	1900.	1898.	1899.
Bar iron	Per pound	.01 1-10	.01 2-10	.02 4-10	118.2	100.0
Iron castings, class "X"	"	.01 6-10	.01 11-20	.02 1-10	31.3	35.5
Iron castings, class "V"	"					
Malleable iron castings	"	.02¼	.02½	.03	20.0	20.0
Steel castings	"	.03¾	.04¼	.07	107.4	64.7
Steel castings	"	.05	.05	.10½	110.0	110 0
Brass castings	"	.13 3-10	.16¼	.20	50.4	23.1
Bronze castings	"	.10 8-10	.14¼	.19	75.9	33.3
Staybolt iron	"	.03	.03	.03¾	25.0	25.0
Sligo iron	"	.03	.03	.03¾	25.0	25.0
Bloom iron	"	.20¾	.00 85-100	.01 5-10	100.0	76 5
Tank steel	"	.01 5-100	.01 25-100	.03	185.7	140 0
Angle steel	"	.01 3-10	.01 3-10	.02 7-10	107.7	107.7
Tee iron	"	.01 35-100	.01 35-100	.02 75-100	103.7	103.7
Other shapes	"	.01¼	.01¼	.02 6-10	108.0	108.0
Fire-box steel	"	.01 4-10	.01 4-10	.03¼	132.1	132.1
Boiler steel	"	.01 1-10	.01 3-10	.03 15-100	186.4	142.3
Boiler flues	Per foot	.09	.12½	.21 6-10	140.0	72.8
Axles,—Engine truck	Per pound	.01 6-10	.02 5-100	.03½	118.8	70.7
Axles,—Engine driving	"	.02 45-100	.03	.05¼	114.3	75.0
Driving Wheel centres, Steel	"	.03	.03	.05	66.7	66.7
Driving Wheel centres, C. Iron	"	.01 6-10	.01 11-20	.02 1-10	31.3	35.5
Driving wheel tires	"	.04	.04	.05	25.0	25.0
Tender truck wheels, 30"	Each	4.26	4.33	7.17	68.3	65.6
Tender truck wheels, 28"	"	3.77	3.76	6.40	69.7	70.2
Babbitt	Per pound	.13 6-10	.16 9-20	.27 17-20	104.8	69.3
Pig Lead	"	.03 6-10	.03 8-10	.04 8-10	33.4	26 3
Lumber—Ash	Per M feet	42.00	44.45	62.00	37.6	39.5
Lumber—Oak	"	18.50	18.50	23.00	24.3	24.3
Lumber—Yellow Pine	"	17.00	18.00	24.50	44.1	36.1
Lumber—Poplar	"	27.00	28.00	39.00	44.4	39.3
Nuts	Per pound	.03 4-10	.03 6-10	.06 5-10	91.2	80.6
Copper Pipe	"	.20	.20	.25	25.0	25 0
Brass Pipe	"	.24	.24	.30	25.0	25.0
Bloom steel	"	.01 16-100	.01 16-100	.03¼	201.7	201.7
Spring steel	"	.03 3-10	.03 3-10	.04 7-10	42.4	42.4
Extra Bronze bearings	"	.09 2-10	.12 1-20	.16 9-10	83 7	35.2
Soft steel	"	.01 85 100	.01 85-100	.04	116.2	116.2

Office Gen'l Supt. Motive Power, Altoona, Pa., June 13, 1900.

1813 **EXHIBIT No. 27, A 1.**

Cost of New Locomotives Built at Pennsylvania Railroad Shops.

Description.	Year.			Percentage of increase in cost for 1900 over	
	1898.	1899.	1900.	1898.	1899.
Class "F1*a*"—Freight Loco..	$10,142.25	$10,501.52	$13,150.00	29.7	25.2
Class "H6"—Freight Loco..	11,724.87	11,884.20	15,500.00	32.2	30.4
Class "G4*a*"—Freight Loco.	.....	13,310.00	17,787.38	.....	33.6
Class "A3"—Shift'g Loco....	5,662.04	5,722.95	7,722.70	36 4	34.9
Class "D13*c*"—Pass'r Loco..	7,942.88	8,190.17	11,150.00	40.4	36.1
Class "D16*d*"—Pass'r Loco..	10,285 39	10,841.92	13,480.00	31.1	24.3
Class "E2"—Pass'r Loco....	.....	14,500.00	19,000.00	.....	31.0

Office General Supt. Motive Power,
Altoona, Pa., June 12, 1900.

1814 **EXHIBIT No. 27, A 2.**

Locomotives Building on Programme of 1900.

Kind.	Number.	Estimated cost of same based on present price of material.	Cost of same based on cost of same classes of locos. built in 1898.	Cost of same based on cost of same classes of locos. built in 1899.
"A3"—Shifting Locomotives	13	$100,395.10	$73,606.52	$74,398.35
"D13*c*"—Passenger Locomotives.	2	22,300.00	15,885.76	16,380.34
"D16"—Passenger Locomotives..	24	323,520.00	246,849.36	260,206.08
"F1*a*"—Freight Locomotives....	18	236,700.00	182,560.50	189,027.36
"E2"—Passenger Locomotives..	1	19,000.00	14,500.00	14,500.00
"G4*a*"—Freight Locomotives....	5	88,936 90	66,550 00	66,550.00
"H6"—Freight Locomotives ...	65	1,007,500 00	762,116.55	772,473.00
Total...	128	$1,798,352.00	$1,362,068.69	$1,393,535.13

Increased Cost, $436,283.31, or 32.0%.

Office General Supt. Motive Power, Altoona, Pa., June 12, 1900.

1815 EXHIBIT No. 28.

(See p. 673 Testimony, p. 1290 of Transcript.)

Charges to Freight Car Repairs, All Lines, First Five Months of 1900 *Compared with the Years* 1897, 1898, *and* 1899.

First five months of 1900	$4,883,089.82
First five mos. 1900 on basis of rate per mile of 1st 5 mos. of 1897	3,674,331.77
Increase 5 months	$1,208,758.05
Percentage of increase	32.9 %
First five months of 1900	$4,883,089.82
First 5 mos. of 1900 on basis of rate per mile of 1st 5 mos. of 1898	3,658,375.18
Increase 5 months	$1,224,714.64
Percentage of Increase	33.5 %
First five months of 1900	$4,883,089.82
First 5 mos. of 1900 on basis of rate per mile of 1st 5 mos. of 1899	3,549,692.26
Increase 5 months	$1,333,397.56
Percentage of Increase	37.6 %

Office of Gen'l Sup't Motive Power, Altoona, Penna., June 13, 1900.

1816 *Charges to Freight Car Pool (All Lines).*

First Five Months of 1900 Compared with First Five Months of 1897, 1898, and 1899.

	Car mileage.	Charges.	Rate per mile.	Increase in rate per mile of first five months of 1900 over first five months of 1897, 1898, and 1899.
First 5 Mos. of 1897	526,833,415	$2,826,619.63	.00,53653	32.9 %
First 5 Mos. of 1898	615,703,043	3,289,108.00	.00,53420	33.5 %
First 5 Mos. of 1899	641,208,739	3,323,563.33	.00,51833	37.6 %
First 5 Mos. of 1900	684,832,492	4,883,089.82	.00,71303	

Office of General Sup't Motive Power, Altoona, Pa., June 12, 1900.

1817 EXHIBIT No. 29.

(See p. 675, Testimony, p. 1292 of Transcript.)

Total Maintenance of Equipment Expenses.

Increase Based on Cost per Car Mile, all P. R. R. Lines East of Pittsburg and Erie.

	5 Mos. 1897	5 Mos. 1898	5 Mos. 1899
Inc. 5 Mos. 1900 over	14.4	21.1	24.5

Inc. cost 5 Mos. 1900 over 5 Mos. 1898..... $1,194,755.
Inc. cost 5 Mos. 1900 over 5 Mos. 1899..... 1,349,875.

1818 EXHIBIT No. 30.

(See p. 676, Testimony, p. 1293 of Transcript.)

Locomotive Repairs.

Increase Based on Cost per Locomotive Mile.

	5 Mos. 1897	5 Mos. 1898	5 Mos. 1899
Inc. 5 Mos. 1900 over	8.3	20.0	17.8

Inc. cost 5 Mos. 1900 over 5 Mos. 1898..... $184,886.
Inc. cost 5 Mos. 1900 over 5 Mos. 1899..... 167,485.

Fuel for Locomotives.

Increase Based on Cost per Locomotive Mile.

	5 Mos. 1897	5 Mos. 1898	5 Mos. 1899
Inc. 5 Mos. 1900 over	19.0	26.7	19.7

Inc. cost 5 Mos. 1900 over 5 Mos. 1898..... $256,960.
Inc. cost 5 Mos. 1900 over 5 Mos. 1899..... 200,918.

1819 EXHIBIT No. 35.

(See p. 759, Testimony, p. 1376 of Transcript.)

List of Articles in Official Classification No. 20 Which Have Been Raised from 6th to 5th Class.

Actinolite ore, in bags.
Basket material (not rattan, reed or willow) min. 24000 lbs.
Boards, cloth, wooden (for wrapping cloth) in bundles or crates, min. 24000 lbs.
Brewers' chips, or shavings, min. 24000 lbs.

Cement boiler covering, N. O. S., in bags.
Cement, magnesia.
Coal tar.
Cocoanut skin shavings or refuse, in bags.
Coffee, in single or double sacks.
Coffee, ground or roasted.
Coke tar, in packages.
Copperas.
Corn husks, in bales, min. 20000 lbs.
Corrosive pots.
Cotton seed hulls or motes, machine compressed in bales.
Creosote, in wood.
Crystals, washing.
Curd, milk, dried, in bags or barrels, min. 24000 lbs.
Epsom salts, in barrels.
Fish, herring, smoked, in boxes or kegs.
Fish, pickled or salted, N. O. S., in packages.
Fish, salt, in paper packages, packed in boxes.
Fish, smoked, in packages.
Flour, potato, in sacks or barrels, actual weight.
Gas tar.
Glauber salts, in barrels.
Grass, sea, pressed in bales, min. 20000 lbs.
Hay, pressed in bales, min. 20000 lbs.
Jute butts.
Magnesite, in boxes, barrels or casks.
Mortar stains or colors, N. O. S., in kegs, half bbls. or casks.
Moss, nursery or peat.
Oil, creosote.
Oil, pine, in tank cars to be furnished by shippers.
Oxide of iron, in kegs, bbls., or casks.
Pea Hulls.
Pitch, N. O. S.
Powders, soap, dry in packages.
Powders, washing, dry in packages.
Rubber, scrap.
Soap, in packages.
Soap, soft.
Soap, extract, dry, in packages.
1820 Soap powders, dry, in packages.
Soap stone.
Soap tablets.
Starch, in sacks, boxes or barrels.
Starch, ground, in barrels.
Straw, N. O. S., pressed in bales, min. 20000 lbs.
Sulphate of iron.
Sugar, N. O. S.
Tar, N. O. S., in buckets or kegs.
Tar, N. O. S., in barrels.
Tar, coke.
Turpentine, in tank cars to be furnished by shippers.
Vinegar shavings or chips, wooden.

1821

EXHIBIT No. 40.

(See Testimony Page 955, P. 1572 of Transcript.)

Pennsylvania Lines West of Pittsburgh.

Statement of Gross Earnings, Operating Expenses, and Ratio of Expenses to Earnings, for the Periods Named Below.

	Mileage operated.	Gross earnings.	Operating expenses.	Ratio of expenses to earnings.
Year ending June 30, 1899	2,627.81	$39,458,187	$27,834,631	70.54%
Year ending June 30, 1898	2,627.81	37,849,864	26,373,889	69.68%
Increase	.....	1,608,323	1,460,742	.86%
6 Mo's ending Dec. 31, 1899	2,627.81	$23,893,684	$16,812,684	70.36%
6 Mo's ending Dec. 31, 1898	2,627.81	19,771,610	13,460,779	68.08%
Increase	.....	4,122,074	3,351,905	2.28%
11 Mo's ending May 31, 1900	2,730.94	$43,575,373	$31,412,058	72.09%
11 Mo's ending May 31, 1899	2,627.81	35,971,559	25,180,455	70.00%
Increase	.....	7,603,814	6,231,603	2.09%

1822 EXHIBIT No. 46.

See Testimony of Archibald Fries, P. 1655 of Transcript (P. 1039 of His Testimony).

PROCTER & GAMBLE CO.
vs.
C. H. & D. RY. CO. ET AL.

No. 13.

Schedule of Present Rates on Soap, Car Loads and Less, from Cincinnati to Principal Points Governed by Official and Southern Classifications, and from Chicago, Governed by Western Classification.

Work up diff. per box soap, Ivory 75 lbs.
Lenox 83 "

o/c advance.

1823 Schedule of present rates on soap, car loads and less, from Cincinnati, Ohio, to principal points east of the Mississippi river and north of the Ohio river governed by official classification.

From Cincinnati to—	Distance.	Soap in packages			Rate per ton per mile.
		*L. C. L.	C. L.		
Boston, Mass. (all rail)	928 miles.	38½	.....	29	
New York, N. Y.	765 "	34½	.902	26	.679
Philadelphia, Pa.	676 "	33½	.972	24	.696
Baltimore, Md.	579 "	32½	1.12	23	.79
Buffalo, N. Y.	446 "	22	.....	15½	
Pittsburg, Pa.	329 "	21	1.34	15	.95
Albany, N. Y.	.....	34	.....	25	
Rochester, N. Y.	515 "	26	.....	19	
Youngstown, O.	....	20	.....	14½	
Cleveland, O.	263 "	18½	.....	13½	
Detroit, Mich.	260 "	19½	.....	14	
Toledo, O.	202 "	18	.....	12½	
Zanesville, O.	175 "	17½	2.00	11	1.26
Columbus, O.	116 "	15½	2.67	9½	1.64
Grand Rapids, Mich.	....	22	.....	16½	
Sandusky, O.	.....	18	.....	12½	
Saginaw, Mich.	.....	22	....	16	
Indianapolis, Ind.	110 "	15½	2.81	9½	1.73
Evansville, Ind.	....	20	.....	15	
Louisville, Ky.	130 "	†8	.....	†6	
Chicago, Ills.	303 "	20	1.32	15	1.00
Peoria, Ills.	.....	20	....	15	
East St. Louis	340 "	20	1.17	15	.88
Cairo, Ill.	.....	22½	.....	17	

*These rates are based on 20% off of third-class rates with fourth-class rates as maxima, as per Supplement No. 3 to Official Classification No. 20.
†Commodity rates; other rates in accordance with classification.

1823½ Schedule of Present Rates on Soap (Car Loads and Less) from Cincinnati, Ohio, to Principal Points Governed by the Southern Classification.

From Cincinnati to—	Castile, toilet, & fancy, any quantity.	Laundry & common, any quantity.		Rate per ton per mile.
		L. C. L.	C. L.	
Memphis Tenn. 487 miles.	40	.....	*19	.846
New Orleans, La., 826 "	54	.....	*27	.654
Meridian Miss. 630 "	92	.....	*32	1.016
Chattanooga Tenn. 330 "	65	.....	*20	1.21
Birmingham Ala.	79	.....	*24	
Atlanta Ga.....	92	.....	*32	
Jacksonville Fla.....	80	*35, *.28		
Nashville Tenn.....	48	*21, *.18		
Charleston S. C.....	80	*35, *.28		

* These are commodity rates; other rates shown are class rates.

1824 Schedule of Present Rates on Soap (Car Loads & Less) from Chicago, Ills., to Principal Western Points. Governed by Western Classification.

From Chicago to—	Common soap.				Soap, N. O. S., any quantity.
	L. C. L.		C. L.		
		Rates, ton per mile.		*Rates, ton per mile.*	
Kansas City, Mo. 458 miles	32	1.39	27	1.18	65 cents per 100 lbs.
Omaha, Neb.....	32		27		65 "
Lincoln, "	36		30		70 "
Denver, Colo. 1097 miles	97		*62		1.65 "
Salt Lake City, Utah..	1.75		*1.20		2.65 "

* These are commodity rates; other rates are class rates.

1825

Exhibit No. 47.

See Testimony of Archibald Fries, Page 1657 of Transcript, P. 1041 of His Testimony.

Procter & Gamble Co.

vs.

C., H. & D. Ry. et al.

No. 11.

Rating on Soap, under Issues of Official Southern and Western Classification.

1826

Memo. of Rating Applied on Soap.

Under Issues of Official Classification in Effect April 1st, 1887, to June 1st, 1900.

Classification. No.	Date effective.	Description of soap.	Rating. L. C. L.	Rating. C. L.	Minimum C. L. weight.
1	April 1st, 1887	Common in boxes Fancy & Castile in boxes	4 5	5	24000
2	July 15th, 1887	Common in boxes Fancy & Castile in boxes	4 5	5	24000
3	Feb. 1st, 1888	Common in boxes Fancy & Castile in boxes	4 5	5	24000
4	Aug. 15, 1888	Common in boxes Fancy & Castile in boxes	4 5	5	24000
5	Feb. 18, 1889	Common in boxes Fancy & Castile in boxes	4 5	5	24000
6	Aug. 15th, 1889	N. O. S. in boxes or brls Fancy, Toilet & Castile in boxes	4 5	5	24000
7	Ap'l 15, 1890	N. O. S. in boxes or brls F'cy Castile & Toilet in boxes	4 5	5	24000
8	Feb'y 2nd, 1891	N. O. S. in boxes or brls F'cy Castile & Toilet in boxes	4 5	5	24000
Sup. 4 to 8	June 1st, 1891	All kinds in packages	4	6	24000
9	Sep. 1st, 1891	All kinds in packages	4	6	24000
10	Ap'l 1st, 1892	All kinds in packages	4	6	24000
11	Jan. 2, 1893	All kinds in packages	4	6	24000
12	Jan'y 1, 1894	All kinds in packages	4	6	24000
13	May 1, 1894	All kinds in packages	4	6	24000
14	Jan'y 1, 1895	All kinds in packages	4	5	24000
Sup. 2 to 14	Jan. 15, 1895	All kinds in packages	4	6	24000
15	Jan'y 1st, 1896	All kinds in packages	4	6	24000
16	Jan'y 1st, 1897	All kinds in packages	4	6	24000
17	Jan'y 1st, 1898	All kinds in packages	4	6	24000
18	Feb. 1st, 1899	All kinds in packages	4	6	30000
Sup. 1 to 18	Feb. 8th, 1899	All kinds in packages	4	6	24000
Sup. 3 to 18	April 1st, 1899	All kinds in packages	4	6	30000
19	July 1st, 1899	All kinds in packages	4	6	30000
20	Jan'y 1st, 1900	All kinds in packages	3	5	30000
Sup. 3 to 20	March 10th, 1900	All kinds in packages	20 % off of 3d class.	5	30000

*Effective June 12, 1899, an exception was issued by individual lines establishing a minimum weight of 24000 lbs. on shipments from Central Freight Ass'n territory destined to points governed by the Western Classification, which exception remained in effect until March 1st, 1900. This exception was issued because of Western Classification providing for a minimum of 24,000 lbs., minimum weight to Western Classification territory is now 30,000 lbs. and has been since

1827 Memo. of Rating Applied on Soap.

Under Issues of Western Classification in Effect Jan'y 1st, 1896, to Jan'y 25th, 1900.

Classification.		Description of soap.	Rating.		Minimum C. L. weight.
No.	Date effective.		L. C. L.	C. L.	
22	Jan'y 1st, 1896	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 12c. per lb. on shipping ticket or bill of lading by consignors	4	5	24,000
		Soap, N. O. S.	2		
23	July 15, 1896	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 12c. per lb. on shipping ticket or bill of lading by consignors	4	5	24,000
		Soap, N. O. S.	2		
24	Jan'y 1st, 1897	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 12c. per lb. on shipping ticket or bill of lading by consignors	4	5	24,000
		Soap, N. O. S.	2		
25	July 1st, 1897	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 12c. per lb. on shipping ticket or bill of lading by consignors	4	5	24000
		Soap, N. O. S.	2		
26	Jan'y 1st, 1898	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 10c. per lb. on shipping ticket or bill of lading by consignors	4	5	24000
		Soap, N. O. S.	2		
27	Aug. 1st, 1898	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 10c. per lb. on shipping ticket or bill of lading by consignors	4	5	24000
		Soap, N. O. S.	2		
28	Jan'y 1st, 1899	Soap boxed and soft soap in barrels:			
		Invoice value certified not to exceed 10c. per lb. on shipping ticket or bill of lading by consignors	4	5	24000
		Soap, N. O. S.	2		

Memo. of Rating Applied on Soap—Continued.

Classification.		Description of soap.	Rating.		Minimum C. L. weight.
No.	Date effective.		L. C. L.	C. L.	
29	July 1st, 1899	Soap boxed and soft soap in barrels: Invoice value certified not to exceed 10c. per lb. on shipping ticket or bill of lading by consignors. Rating will not apply on packages of soap any part of which exceeds 10c. per lb. in value..	4	5	24.000
		Soap, N. O. S.....	2		
30	Jan'y 25th, 1900	Soap boxed: soft soap in barrels:			
1828		Invoice value certified not to exceed 10c. per lb. on shipping ticket or bill of lading by consignors. Rating will not apply on packages of soap any part of which exceeds 10c. per lb. in value..	4	5	30.000
		Soap, N. O. S	2		

Memo. of Rating Applied on Soap.

Under Issues of Southern Classification in Effect June 16th, 1894, to June 1st, 1900.

Classification.		Description of soap.	Rating, any quantity.
No.	Date effective.		
23	June 16, 1894	Castile & Fancy	2
		Common in boxes and so described on packages	6
		Common in barrels same as soap, common in boxes.	
24	May 1st, 1896	Castile & Fancy	2
		Common in boxes and so described on packages.....	6
		Common in barrels same as soap, common in boxes.	
25	Oct. 1st, 1897	Castile & fancy.....	2
		Common in boxes and so described in packages.....	6
		Common in barrels same as soap common in boxes.	
26	Feb'y 1st, 1900	Castile & toilet.....	2
		Laundry in boxes or barrels and so indicated on packages	6
27	June 1st, 1900	Castile & toilet.....	2
		Laundry in boxes or barrels and so indicated on packages.....	6

1829 EXHIBIT No. 48.

See Testimony of Archibald Fries, Page 1657 of Transcript, p. 1041 of His Testimony.

PROCTER & GAMBLE CO.
vs.
C., H. & D. RY. CO. ET AL.

No. 15.

Prices of Various Articles Taking Fifth Class Official Classification.

1830 Prices of Various Articles Taking Fifth Class Official Classification.

Commodity.	Price.	Average car load weight.	Price named by—
Apples dried	1½ to 5c. per lb.	30000 lbs.	R. A. Holden.
Bi-carbonate soda	$1.00 per 100 lbs	40000 "	Isaac Winkler & Co.
Glucose	1.70 " " "	40000 "	Rhinehart & Newton.
Oil lard	40 to 56c. per gal.	28000 "	Burkhardt Bros.
" fish	3¾c. per lb.	30000 "	Standard Oil Co
" rosin	1c. " "	30000 "	"
" tallow	6c. " "	30000 "	"
" cotton seed	5½c. " "	30000 "	"
" linseed	8¾c. " "	30000 "	"
" paraffine wax	6 to 10c. " "	40000 "	"
Starch Laundry	3¼c. " "	40000 "	Erckenbrecker S. & Co.
pearl, for sizing	1¾c. " "	50000 "	"
Sugar, grape	2 to 3c. " "	40000 "	Reinhart & Newton.
"	3 to 5.8 " "	40000 "	Flach Bros.
Tobacco fertilizers	4.00 to 5.00 ton	30000 "	Brown & Edmonds.
Turpentine	3.6c. per lb	40000 "	Standard Oil Co.
Seed Clover	7.50 to 9.00 per 100	30000 "	J. Chas. McCullough.
" Timothy	2.25 to 3.00 " "	30000 "	"
" Red top ordinary	2.50 to 4.50 " "	30000 "	"
" " heavy	7.00 to 8.00 " "	30000 "	"
" Orchard grass	6.00 to 9.00 " "	30000 "	"
" Blue grass	6.00 to 7.00 " "	30000 "	"
Twine Binder	9¾c. per lb.	40000 "	"
Bags Cotton	12.00 to 15.00 per 100	40000 "	"
" Burlap	7.25 " "	40000 "	"
Coffee	8¾ to 16c. lb. average 9½c.	40000 "	M. C. Howell.
Canned fruits and vegetables.	1.50 to 2.50 per 2 doz. cases, weights 25-42-68 lbs.	40000 "	W. W. Blair & Co.

1831 EXHIBIT No. 49.

See Testimony of Archibald Fries, Page 1659 of Transcript; P. 1043 of His Testimony.

PROCTER & GAMBLE CO.

vs.

C., H. & D. RY. CO. ET AL.

No. 16.

Average Revenue Per Ton Per Mile, All Railroads in the United States.

Average Revenue Per Ton Per Mile B. & O. S. W. R. R.

1832 *Average Revenue Per Ton Per Mile, All Railroads in United States.*

As Per Poor's Manual.

Years 1886 to 1898.

1886	1.042
1887	1.034
1888	0.977
1889	0.970
1890	0.927
1891	0.929
1892	0.941
1893	0.893
1894	0.864
1895	0.839
1896	0.821
1897	0.797
1898	0.758

Average Revenue Per Ton Per Mile, B. & O. S. W. R. R.

Years 1890 to 1899, Inclusive.

1890	0.83
1891	0.92
1892	0.85
1893	0.86
1894	0.80
1895	0.78
1896	0.68
1897	0.63
1898	0.55
1899	0.527

1833 EXHIBIT No. 50.

See Testimony of Archibald Fries, Page 1660 of Transcript; P. 1044 of His Testimony.

PROCTER & GAMBLE CO.

vs.

C., H. & D. RY. CO. ET AL.

The Baltimore & Ohio Southwestern Railroad Co.

Distribution of Freight Traffic for Year Ending June 30th, 1899.

Grain	15.86%	
Flour	1.83 "	
Other mill products	1.32 "	
Hay	1.34 "	
Tobacco	.80 "	Products of Agriculture.
Cotton	1.04 "	
Fruits & Vegetables	.83 "	
Other agricultural products	.44 "	
	23.46%	
Live Stock, Meats, Packing House products, &c.	4.54%	Products of Animals.
Anthracite Coal, Bituminous "		
Coke, Ores, Stone, Sand, &c.	30.48%	Products of Mines.
Lumber & Forest Products	8.33%	Products of Forests.
Petroleum and other oils	1.23%	
Sugar	.30 "	
Naval Stores	.05 "	
Pig Iron & Blooms	2.58 "	
Iron and Steel Rails	.46 "	
Castings and Machinery	.86 "	Products of Manufactories
Bar and Sheet Metal	5.53 "	
Cement, Brick & Lime	3.38 "	
Agricultural Implements	.15 "	
Wagons, &c., Tools	.78 "	
Liquors, &c.	1.18 "	
Household goods & furniture	.18 "	
Salt	.41 "	
	17.09%	
Merchandise	12.39%	
Miscellaneous	3.71%	
	100.00%	

1834

B. & O. S. W. R. R.

Distribution of Freight Traffic.

		Commodities.	1897.		1898.		1899.	
			Tons.	$	*Tons.*	$	*Tons.*	$
Products of Agriculture.	A	Grain	573,307	16.38	748,463	17.59	703,414	15.86
	A	Flour	58,594	1.66	50,801	1.19	80,999	1.82
	A	Other mill products	39,936	1.13	55,714	1.31	58,691	1.32
	B	Other product- of agriculture	153,877	4.37	217,043	5.11	197,731	4.45
Products of animals.	B	Live Stock, Dressed Beef, &c., &c.	179,957	5.11	217,978	5.13	201,582	4.54
Products of Mines.	A	Anthracite Coal	9,679	.27	38,713	.91	41,635	.94
	A	Bituminous "	932,370	26.52	1,078,324	25.35	1,035,254	23.34
	A	Coke	52,299	1.49	56,884	1.34	117,730	2.65
	A	Ores	4,602	.13	2,214	.05	5,881	.14
	A	Stone, Sand, &c., &c	108,658	3.09	137,117	3.22	151,362	3.41
Product of forests.	A	Lumber	179,766	5.11	225,903	5.31	253,846	5.72
	A	Other forest products	45,680	1.30	87,661	2.06	115,704	2.61
Manufactures.	A	Iron, Pig & Bloom	77,352	2.20	73,826	1.74	114,299	2.58
	A	Iron & Steel Rails	40,566	1.15	20,300	.48	20,485	.46
	A	Cement, Brick & Lime	95,308	2.71	133,702	3.14	149,707	3.38
	A	Salt	16,827	.48	15,193	.36	18,296	.41
	A	Other Man'f'd Articles	290,422	8.24	430,499	10.11	454,940	10.26
	B	Merchandise	462,982	13.17	497,350	11.69	549,690	12.39
	B	Miscellaneous	193,178	5.49	166,438	3.91	163,789	3.71
		Totals	3,515,360	100.	4,254,123	100	4,435,035	100
	A	Commodity Rates	2,234,944	63.62	2,724,815	64.05	2,867,303	64.65
	B	Class Rates	1,280,416	36.38	1,529,308	35.95	1,567,732	35.35
			3,515,360	100	4,254,123	100	4,435,035	100

1833 EXHIBIT No. 50.

See Testimony of Archibald Fries, Page 1660 of Transcript; P. 1044 of His Testimony.

PROCTER & GAMBLE CO.

vs.

C., H. & D. RY. CO. ET AL.

The Baltimore & Ohio Southwestern Railroad Co.

Distribution of Freight Traffic for Year Ending June 30th, 1899.

Grain	15.86%	
Flour	1.83 "	
Other mill products	1.32 "	
Hay	1.34 "	
Tobacco	.80 "	Products of Agriculture.
Cotton	1.04 "	
Fruits & Vegetables	.83 "	
Other agricultural products	.44 "	
	23.46%	
Live Stock, Meats, Packing House products, &c.	4.54%	Products of Animals.
Anthracite Coal, Bituminous " Coke, Ores, Stone, Sand, &c.	30.48%	Products of Mines.
Lumber & Forest Products	8.33%	Products of Forests.
Petroleum and other oils	1.23%	
Sugar	.30 "	
Naval Stores	.05 "	
Pig Iron & Blooms	2.58 "	
Iron and Steel Rails	.46 "	
Castings and Machinery	.86 "	Products of Manufactories.
Bar and Sheet Metal	5.53 "	
Cement, Brick & Lime	3.38 "	
Agricultural Implements	.15 "	
Wagons, &c., Tools	.78 "	
Liquors, &c.	1.18 "	
Household goods & furniture	.18 "	
Salt	.41 "	
	17.09%	
Merchandise	12.39%	
Miscellaneous	3.71%	
	100.00%	

1834

B. & O. S. W. R. R.

Distribution of Freight Traffic.

		Commodities.	1897.		1898.		1899.	
			Tons.	%	*Tons.*	%	*Tons.*	%
Products of Agriculture.	A	Grain	573,307	16.38	748,463	17.59	703,414	15.86
	A	Flour	58,594	1.66	50,801	1.19	80,999	1.82
	A	Other mill products	39,936	1.13	55,714	1.31	58,691	1.32
	B	Other product- of agriculture	153,877	4.37	217,043	5.11	197,731	4.45
Products of animals.	B	Live Stock, Dressed Beef, &c., &c.	179,937	5.11	217,978	5.13	201,582	4.54
Products of Mines.	A	Anthracite Coal	9,679	.27	38,713	.91	41,635	.94
	A	Bituminous "	932,370	26.52	1,078,324	25.35	1,035,254	23.34
	A	Coke	52,299	1.49	56,884	1.34	117,730	2.65
	A	Ores	4,602	.13	2,214	.05	5,881	.14
	A	Stone, Sand, &c., &c	108,658	3.09	137,117	3.22	151,362	3.41
Product of forests.	A	Lumber	179,766	5.11	225,903	5.31	253,846	5.72
	A	Other forest products	45,680	1.30	87,661	2.06	115,704	2.61
Manufactures.	A	Iron, Pig & Bloom	77,352	2.20	73,826	1.74	114,299	2.58
	A	Iron & Steel Rails	40,566	1.15	20,380	.48	20,485	.46
	A	Cement, Brick & Lime	95,308	2.71	133,702	3.14	149,707	3.38
	A	Salt	16,827	.48	15,193	.36	18,296	.41
	B	Other Man'f'd Articles	290,422	8.24	430,499	10.11	454,940	10.26
	B	Merchandise	462,982	13.17	497,350	11.69	549,690	12.39
	B	Miscellaneous	193,178	5.49	166,438	3.91	163,789	3.71
		Totals	3,515,360	100.	4,254,123	100	4,435,035	100
	A	Commodity Rates	2,234,944	63.62	2,724,815	64.05	2,867,305	64.65
	B	Class Rates	1,280,416	36.38	1,529,308	35.95	1,567,732	35.35
			3,515,360	100	4,254,123	100	4,435,035	100

1835 C., C., C. & St. Louis Ry.

Distribution of Freight Traffic.

		Commodities.	1897.		1898.		1899.	
			Tons.	$	*Tons.*	$	*Tons.*	$
Products of Agriculture.	A	Grain	1,367,080	16.62	1,618,836	16.81	1,456,935	14.51
	A	Flour	215,371	3.13	284,535	2.96	304,299	3.03
	A	Other mill products	147,132	1.79	135,957	1.41	168,476	1.68
	B	Other products of Agriculture	410,060	4.97	447,369	4.93	415,976	4.14
Products of animals.	B	Live Stock, Dressed Beef, &c., &c	579,059	7.06	615,583	6.38	599,519	5.96
Products of Mines.	A	Anthracite Coal	91,987	1.12	119,825	1.24	126,567	1.26
	A	Bituminous "	1,573,210	19.13	1,607,165	16.69	1,666,834	16.60
	A	Coke	130,221	1.58	291,765	3.03	311,485	3.10
	A	Ores	48,844	.59	50,601	.53	49,722	.49
	A	Stone, Sand, &c., &c	499,170	6.07	524,283	5.44	596,658	5.94
Manufactures.	A	Iron, Pig & Bloom	150,555	1.83	199,820	2.08	255,481	2.54
	A	Iron & Steel Rails	18,791	.23	19,366	.20	13,282	.13
	A	Tile, Cement, Brick & Lime	255,137	3.10	301,024	3.12	292,986	2.92
	B	Other Manufactured Articles	787,699	9.59	1,065,432	11.07	1,170,306	11.66
Products of Forests.	A	Lumber	813,269	9.89	1,018,727	10.55	1,113,595	11.09
	B	Merchandise	942,717	11.46	1,089,907	11.32	1,238,982	12.34
	B	Miscellaneous	151,135	1.84	215,959	2.24	262,023	2.61
			8,223,347	100	9,630,159	100	10,043,126	100.
	B	Commodity Rates	5,352,697	65.08	6,168,904	64.06	6,356,320	63.29
	B	Class Rates	2,870,650	34.92	3,461,255	35.94	3,686,806	36.71
			8,223,347	100	9,630,159	100	10,043,126	100

1836

Exhibit No. 51.

Procter & Gamble Co.
vs.
C., H. & D. Ry. Co. et al.

See Testimony of Archibald Fries, Page 1669 of Transcript; p. 1053 of His Testimony.

Statement of Gross Earnings, Gross Expenses, and Percentage Expenses to Earnings of B. & O. R. R. for Years 1891 *to* 1899, *Inclusive.*

Year.	Gross earnings.	Gross expenses.	Percentage expenses to earnings.
1891	$24,530,395.00	$17,078,283.00	69.62
1892	18,927,574.00	13,866,577.00	69.29
1893	26,214,807.00	19,041,982.00	72.64
1894	22,502,662.00	15,560,689.00	69.15
1895	22,817,182.00	15,801,044.00	69.25
1896	23,944,781.00	17,583,420.00	73.43
1897	25,582,122.00	20,012,094.00	78.23
1898	27,722,788.00	20,276,091.00	73.14
1899	29,260,211.00	21,783,322.00	76.69

EXHIBIT No. 52.

PROCTER & GAMBLE CO.

vs.

C., H. & D. RY. CO. ET AL.

See Testimony of Archibald Fries, Page 1669.

Statement of Gross Earnings, Gross Expenses, and Percentage Expenses to Earnings of B. & O. S. W. R. R. for Years 1891 *to* 1899, *Inclusive.*

Year.	Gross earnings.	Gross expenses.	Percentage expenses to earnings.
1891	$6,435,645.00	$4,304,983.00	66.88
1892	6,877,146.00	4,692,712.00	68.24
1893	6,958,598 00	4,555,812.00	65.47
1894	6,260,198.00	3,964,003.00	63.32
1895	6,323,036.00	4,017,104.00	63.53
1896	6,458,395.00	4,288,325.00	66.40
1897	6,149,000.00	4,257,304.00	69.34
1898	6,904,317.00	4,916,806 00	71.21
1899	6,873,275.00	5,015,547.00	72.97

1837

EXHIBIT No. 53.

PROCTER & GAMBLE CO.

vs.

C., H. & D. RY. CO. ET AL.

See Testimony of Archibald Fries, Page 1673 of Transcript; P. 1057 of His Testimony.

Statement of Increased Revenue on Interstate and Ohio Soap Traffic of the Procter and Gamble Company for Months of January, February, March, April, and May, 1900, *Showing Average Increase Per Day.*

Roads.	Interstate traffic. Total increase.	Ohio traffic. Total increase.
C. C. C. & St. L.	$3,659.25	$538.54
C. H. & D. R. R.	2,238.96	243.24
B. & O. S. W. R. R.	3,280.63	208.19
	9,178.84	990.97

	Interstate traffic. Increase per day.	Ohio traffic. Increase per day.	Total. Increase per day.
On basis of 150 days for 5 months	$61.19	$6.61	$67.80
On basis 130 actual working days for 5 months	70.60	7.62	78.22

1838 *Statement Showing Advances Made in Rates on Soap in Carload Lots from Cincinnati, Ohio, to Various Points as Noted; Showing also Difference, per cent. of Difference, and the Average Advance per Box on Lenox and Ivory Soap.*

To—	5th class rate.	6th class rate.	Difference.	Per cent. of difference.	Difference, Lenox soap per box; gross weight, 83 lbs.	Difference, Ivory soap per box; gross weight, 70 lbs.
Boston Mass. (all rail)	29	23.5	5.5	23.4	4.57	3.85
New York	26	21.5	4.5	20.9	3.74	3.15
Philadelphia	24	19.5	4.5	23.1	3.74	3.15
Baltimore	23	18.5	4.5	24.3	3.74	3.15
Buffalo, N. Y	15.5	13	2.5	19.2	2.08	1.75
Pittsburg, Pa	15	12	3	25	2.49	2.10
Albany, N. Y	25	20.5	4.5	22	3.74	3.15
Rochester, N. Y	19	16	3	18.8	2.49	2.10
Youngstown, O	14.5	11.5	3	26.1	2.49	2.10
Cleveland, O	13.5	10.5	3	28.6	2.49	2.10
Detroit, Mich	14	11	3	27 3	2.49	2.10
Toledo, O	12.5	10	2.5	25	2.08	1.75
Zanesville, O	11	9	2	22.2	1.66	1.40
Columbus, O	9.5	8	1.5	18.8	1.25	1.05
Grand Rapids	16.5	13.5	3	22.2	2.49	2.10
Sandusky, O	12.5	10	2.5	25	2.08	1.75
Saginaw, Mich	16	13	3	23.1	2.49	2.10
Indianapolis	9.5	8	1.5	18.8	1.25	1.05
Louisville, Ky	8	8	0	0	0	0
Chicago, Ill	15	12	3	25	2.49	2.10
Peoria, Ill	15	12	3	25	2.49	2.10
East St. Louis, Ill	15	12	3	25	2.49	2.10
Cairo, Ill	17	14	3	21.4	2.49	2.10
Totals	376	307	69	510.2	57.32	48.30
23 Points—Averages	16.4	13.4	3	22.2	2.49	2.10

1839 *Statement Showing Advances Made in Rates on Soap in Less than Carload Lots from Cincinnati, Ohio, to Various Points as Noted; Showing also Difference, per cent. of Difference, and the Average Advance per Box on Lenox & Ivory Soap.*

To—	3d class rate, less 20⅔.	4th class rate.	Difference.	Per cent. of difference.	Difference, Lenox soap per box; gross weight, 83 lbs.	Difference, Ivory soap per box; gross weight, 70 lbs.
Boston, Mass. (all rail)	39	34.5	5.5	16.0	4.57	3.85
New York	35	30.5	4.5	14.7	3.74	3.15
Philadelphia	33	28.5	4.5	15.8	3.74	3.15
Baltimore, Md	32.5	27.5	5	18.2	4.15	3.50
Buffalo, N. Y	21.5	18.5	3	16.2	2.49	2.10
Pittsburg, Pa	21	18	3	16.7	2.49	2.10
Albany, N. Y	33.5	29.5	4	13.6	3.32	2.80
Rochester, N. Y	25.5	22.5	3	13.3	2.49	2.10
Youngstown, O	20	17	3	17.7	2.49	2.10
Cleveland, O	19	16	3	18.8	2.49	2.10
Detroit, Mich	19.5	16.5	3	18.2	2.49	2.10
Toledo, Ohio	18	15	3	20.0	2.49	2.10
Zanesville, Ohio	17	14	3	21.4	2.49	2.10
Columbus, Ohio	15.5	12.5	3	24.0	2.49	2.10
Grand Rapids	22	19	3	15.8	2.49	2.10
Sandusky, Ohio	18	15	3	20.0	2.49	2.10
Saginaw, Mich	22	19	3	15.8	2.49	2.10
Indianapolis, Ind	15.5	12.5	3	24.0	2.49	2.10
Louisville, Ky	12	10	2	20.0	1.66	1.40
Chicago, Ills	20	17	3	17.7	2.49	2.10
Peoria, Ills	20	17	3	17.7	2.49	2.10
East St. Louis, Ills	20	17	3	17.7	2.49	2.10
Cairo, Ill	23	19.5	3.5	18	2.91	2.45
Totals	522.5	416.5	77	411.3	63.93	53.90
23 points—Averages	22.7	19.4	3.35	17.9	2.78	2.34

1839½

Exhibit No. 54.

See Testimony of Archibald Fries, Page 1673 of Trans.

Procter & Gamble Co.
v.
C., H. & D. Ry. Co. et al.

Statement Showing Rates from Ivorydale, Ohio, to Various Points, Based upon the Average Rate per Ton per Mile Existing Over All Railroads of the United States for the Year 1898, Showing Comparison with the 5th and Sixth Class Rates from Ivorydale to the Same Points.

Distance, Ivorydale to East St. Louis, Ill., 347 miles.

Computing this distance at average rate per ton per mile (.758) equals $2 63 per ton or 13.1 cents per hundred pounds.

Sixth Class Rate, Ivorydale to East St. Louis 12 cents less 2 cents I. & M. V. Ry. terminal, equals 10 cents or 3.1 cents less than we would be allowed based upon the average rate.

Fifth class rate Ivorydale to East St. Louis Ill., 15 cents less I. & M. V. Ry. terminal 2 cents equals 13 cents or one tenth of a cent less than we would be allowed based upon the average rate.

Distance Ivorydale to New York 765 miles Rate based upon average rate per ton per mile (.758) equals $5.80 per ton or 29 cents per hundred pounds.

Sixth Class rate Ivorydale to New York 21½ cents. Allowing 1½ cents for I. & M. V. Ry. terminal and 3 cents New York terminal, rate divides as follows:

187 miles	B. & O. S. W. R. R. proportion 25%	4.625	cents
578 "	B. & O. proportion	12.375	"
	New York terminal	3.	"
½ "	I. & M. V. Ry. terminal	1.5	"
	Through	21.5	"

Fifth Class Rate, Ivorydale to New York, 26 cents. Allowing 1½ cents I. & M. V. Ry. terminal and 3 cents New York terminal rate divides as follows:

187 miles	B. & O. S. W. R. R. proportion 25%	5.75	cents
578 "	B. & O. R. R. proportion	15.75	"
	New York terminal	3.	"
½ "	I. & M. V. Ry. terminal	1.5	"
	Through	26.	"

Distance Ivorydale to Pittsburgh Pa., 329 miles, which at average rate (.758) equals $2.44 per ton or 12.2 cents per hundred pounds.

Sixth class rate, Ivorydale to Pittsburg 12 cents. Allowing I. & M. V. Ry. terminal 1½ cents rate divides as follows:

B. & O. S. W. R. R. (38 miles)	1.4	cents
B. & O. R. R.	9.1	"
I. & M. V. Ry. terminal ⅝ miles	1.5	"
Through	12.	"

Fifth class rate, Ivorydale to Pittsburg, 15 cents allowing I. & M. V. Ry. 1½ cents terminal, the rate divides as follows:

B. & O. S. W. R. R. (38 miles)	1.8	cents
B. & O. R. R.	11.7	"
I. & M. V. Ry. terminal ⅝ miles	1.5	"
Through	15.	

1840 Distance, Ivorydale to Columbus, Ohio, 109 miles which at average rate (.758) equals 82 cents per ton, or 4.1 cents per hundred pounds.

Sixth class rate, Ivorydale to Columbus, 8 cents, deducting 2 cents I. & M. V. Ry. terminal divides:

B. & O. S. W. R. R. (38 miles)	2.3	cents
B. & O. R. R. (71 miles)	3.7	"
I. & M. V. Ry. terminal	2.	"
Through	8.	"

Fifth class rate 9½ cents deducting 2 cents I. & M. V. Ry. terminal, divides:

B. & O. S. W. R R. (38 miles)	2.9	cents
B. & O. R. R. (71 miles)	4.6	"
I. & M. V. terminal	2.	"
Through	9.5	"

Distance, Ivorydale to Chicago Ill., via Vincennes Ind., and E. & T. H. and C. & E. I. Railroads, 427 miles which based upon average rate (.758) equals $3.34 per ton or 16.7 cents per hundred pounds.

Sixth class rate Ivorydale to Chicago 12 cents, deducting 2 cents I. & M. V. Ry. terminal, rate divides:

B. & O. S. W. R. R (192 miles)	4.5	cents
E. & T. H. R. R.		
C. & E. I. R. R. (235 miles)	5.5	"
I. & M. V. Ry. terminal ⅝ miles	2.	"
Through	12.	"

Fifth class rate Ivorydale to Chicago, 15 cents, deducting 2 cents I. & M. V. Ry. terminal rate divides:

B. & O. S. W. R. R. (192 miles)	5.85	cents
E. & T. H. R. R.		
C. & E. I. R. R. (235 miles)	7.15	"
I. & M. V. terminal ⅝ miles	2.	"
Through	15.	"

1841 EXHIBIT No. 55.

See Testimony of Archibald Fries, Page 1676 of Trans.

Statement Showing Tonnage of Procter & Gamble Co. Soap Forwarded via the C., C., C. & St. L., C., H. & D., and B. & O. S. W. R. R'ds, as Also the Amount of Advance per Box of Soap by Reason of the Advance in the Official Classification Effective January 1st, 1900, Taken from Claims Submitted Complainants for Month of May, 1900.

C., H. & D.	Less car loads. Lbs.	Car loads. Lbs.	Total advance in revenue.	Average advance per box.
Interstate.....	424,380	654,193	$402.11	
Ohio	25,015	✓	7.34	
	449,395	654,193	409.45	
Total,	1,103,588			
Ivory 20% =	220,717 @ 70 lbs. each =		3153 bx.	
Others 80% =	882,871 " 83 " " =		10637 "	
			13790 "	2.96c.
C., C., C. & St. L.	Lbs.	Lbs.	Rev.	
Interstate.....	658,715	1,206,625	$703.39	
Ohio.....	67,560	94,510	46.44	
	726,275	1,301,135	749.83	
Total	2,027,410			
Ivory 20%	405,482 @ 70 lbs. bx.	=	5792 bx.	
Others 80%	1,621,928 " 83 " "	=	19,541 "	
			25,333 "	2.96
B. & O. S. W.	Lbs.	Lbs.	Rev.	
Interstate.....	311,515	1,397,347	$680.89	
Ohio.....	55,565	✓	17.15	
	367,080	1,397,347	698.04	
Total	1,764,427			
Ivory 20%	352,885 @ 70 lbs. bx.	=	5041 bx.	
Others 80%	1,411,542 @ 83 " "		17007 "	
			22048 "	3.16

Summary.

C. H. & D.: C. C. C. & St. L.: B. & O. S. W. 61171 bx. $1857.32=
Av..... 3.03 per bx.

1842

EXHIBIT No. 56.

See Page 1067 of Testimony of Archibald Fries; Transcript, P. 1683.

No. 14.

Schedule of Class Rates from Cincinnati, Ohio, to Principal Northern, Eastern, and Southern Points.

1843 From Cincinnati to—	Classification governing.	In effect during year.	Classes. Rates in cents per 100 lbs.					
			1.	2.	3.	4.	5.	6.
Indianapolis	Official	1887	25	22	18	13	9	8
		1900	25	22	19½	12½	9½	8
Louisville	"	1887						
		1900	25	20	15	10	8	8
Chicago	"	1887	40	34	25	17	15	11
		1900	40	34	25	17	15	12
Peoria	"	1887						
		1900	40	34	25	17	15	12
E. St. Louis	"	1887						
		1900	40	34	25	17	15	12
Cairo	"	1887	41	37	29	19	17	14
		1900	44.	37½	28½	19½	17	14
Memphis	Southern	1887						
		1900	75	60	54	40	35	30
New Orleans	"	1887						
		1900	98	83	73	54	44	39
Meridian, Miss.	"	1896						
		1900	1.06	92	78	66	55	48
Chattanooga	"	1896						
		1900	76	65	57	47	40	30
Birmingham	"	1896						
		1900	89	79	68	55	47	36
Atlanta	"	1896						
		1900	1.07	92	81	68	56	46
Jacksonville	"	1896						
		1900	95	80	75	70	58	46
Nashville	"	1896						
		1900	53	48	39	31	25	25
Charleston	"	1896						
		1900	95	80	75	70	58	46

1844 *Schedule of Class Rates from Cincinnati, Ohio, to Principal Northern, Eastern, & Southern Points.*

From Cincinnati to—	Classification governing.	In effect during year.	Classes. Rates in cents per 100 lbs.					
			1.	2.	3.	4.	5.	6.
Boston (all rail)	Official	1887	72	62½	48½	34½	29	23½
		1900						
New York	"	1887	65	56½	43½	30½	26	21½
		1900						
Phil'a	"	1887	63	54½	41½	28½	24	19½
		1900						
Balto	"	1887	62	53½	40½	27½	23	18½
		1900						
Buffalo	"	1887	37½	33	24	17½	15½	13
		1900	42	36	27	18½	15½	13
Pittsb'g	"	1887	37	34	25	17	15	12
		1900	41	35	26	18	15	12
Albany, N. Y.	"	1887						
		1900	67½	54	42	29½	25	20½
Rochester, N. Y	"	1887						
		1900	48	42	32	22½	19	16
Youngst'n, O	"	1887	35	32	23	15	13	10
		1900	40	34	25	17	14½	11½
Cleveland, O	"	1887	33	30	23	15	13	10
		1900	37	32	23½	16	13½	10½
Detroit, Mich	"	1887	35	32	23	15	13	10
		1900	38½	33	24½	16½	14	11
Toledo, O	"	1887	33	30	23	15	13	10
		1900	34	29½	22½	15	12½	10
Zanesville, O	"	1887	33	30	23	15	13	10
		1900	31	26½	21½	14	11	9
Columbus, O	"	1887	25	22	20	13	9	8
		1900	25	22	19½	12½	9½	8
G'd Rapids	"	1887	42	36	27	18	17	14
		1900	43	36½	27½	19	16½	13½
Sandusky, O	"	1887	33	30	23	15	13	10
		1900	34	29½	22½	15	12½	10
Saginaw, Mich	"	1887	39	36	26	18	16	13
		1900	43	36½	27½	19	16	13

1845 And afterwards, to-wit: but on the same day, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, in this cause, the Testimony of John H. Wanner; *et al.* in the case of The Procter & Gamble Company *vs.* The Cincinnati Hamilton & Dayton Railway Company *et al.* taken in August 1900, which Testimony is clothed in the words and figures following to-wit:

1846 Before the Interstate Commerce Commission.

THE PROCTER & GAMBLE COMPANY
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY ET AL.

Hearing at New York City, N. Y., August 6th, 7th, & 8th, 1900.

Present: Commissioners: Knapp (Chairman), and Yeomans.
Appearances:
John W. Warrington and Mortimer Matthews for complainant.
Lawrence Maxwell for C. H. & D. R. R. Co. and Pennsylvania Railroad Company.
Edward Colston for B. & O. Southwestern Railway Co.
S. O. Bayless for N. Y. C. & H. R. R. R. Co., L. S. & M. S. Ry. Co., and C. C. C. & St. L. Ry. Co.
J. J. McAuliffe, Stenographer.

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* * * * * * *

1979 NEW YORK CITY, N. Y., *August* 7, 1900—11 o'clock a. m.

F. H. KINGSBURY, a witness on behalf of the defendants, being d-ly sworn, testified as follows:

Mr. COLSTON: Mr. Kingsbury, you may state where you reside, and what your business it?

Mr. KINGSBURY: I reside in East Orange. I am a member of the Classification Committee and the agent of the Union Line.

Mr. COLSTON: Will you please explain briefly what the Union Line is and what your duties are as agent?

Mr. KINGSBURY: It is the fast freight line of the Pennsylvania Railroad and its allied lines.

Mr. COLSTON: When you say you are a member of the Classification Committee, you mean the Official Classification Committee?

Mr. KINGSBURY: Yes, sir.

Mr. COLSTON: Were you a member of the Classification Committee when Classifications Nos. 5 and 6 were approved?

Mr. KINGSBURY: Yes, sir.

Mr. COLSTON: I want to ask whether that committee when
1980 approving classifications Nos. 5 and 6 took into account at all any carriage of articles embraced within any of the classes of that classification at net weights.

Mr. MATTHEWS: I object. If your honors please, it seems to me that does not come within the order of the Commission as to taking further testimony in reference to whether the net weight practice existed. I do not understand that we are going into the case *de novo* on this examination.

Mr. COLSTON: I supposed it was sufficiently connected with the subject to be admissible under the rule. We did not have in Washington but one person present, that is Mr. McLeod, who was a member of the classification committee at the times these two classifications, Nos. 5 and 6 were adopted, and I think it very important. I explained my view of that subject in Washington. In view of the concluding paragraph of the opinion of the Commission in that case, it would indicate that they understood the classification committee approved of the net weight practice and put soap in fifth class with that view and that they would not put it in fifth class unless they intended that it should be carried at net weights. It is very im-
porant, I think. I will have to leave it to your honors to say
1981 whether you include it with the net weight business.

The CHAIRMAN: Your objection is taken to the form in which the question is asked?

Mr. MATTHEWS: My objection is that it is not germane to the subject of examination under the order of the Commission, which was, as I understand it, that an application was made to the Commission to take further testimony as to the existence of the net weight practice prior to the year 1889 or 1890. There was no application made at that time to take testimony as to what the classification committee thought or did not think about it, knew or did not know about it. That question came up incidentally in the examination at Washington, began and ended there—and certainly this subject is not within the order of the Commission. My objection is not to the form of the

question, although there is a further objection in this, and that is, the question is aimed at classifications Nos. 5 and 6, which were approved in 1887—one at the beginning of 1887 and the other later on in 1887. It would seem to me that the inquiry if it were permissible should go to classification No. 1, because that is the time the classification of soap was fixed in the classification.

Mr. COLSTON: We will go on that further.

1982 Mr. MATTHEWS: I think there is an objection to the question as applicable to Nos. 5 and 6. Of course, my original, practically my principal objections was that this subject was not a part of the testimony which was ordered to be taken by the Commission.

Mr. COLSTON: I understand the objection made by counsel is that the stipulation, the reservation to take more testimony was limited exclusively to the question whether the net weight practice existed as a fact. Now, I do not understand that it was so limited, and if it were so limited I think the knowledge that this witness, as a member of the classification committee, had does bear on the question of the existence of the net weight practice as a fact. I think it comes even within that limited construction of the reservation. Consequently I do not understand that the reservation is quite as limited as counsel on the other side claims in his objection that it is. I understand that the whole matter of the net weight practice is open for further testimony and I think this testimony therefore might properly be received. We do not desire to open up the case.

The CHAIRMAN: You understand, of course, Mr. Matthews that a proceeding of this sort involves the public interest and
1983 differs in that respect materially from controversies which arise between individuals. We are never disposed to shut out any line of inquiry that is likely to aid us to reach a correct conclusion as to what ought to be done and we never mean to allow either side to be precluded from showing all the facts they desired to show and which we think will have any possible bearing upon the question. It was not in our mind that the inquiry here should be limited strictly to the question of the net weight practice. You yourself, if I recollect, aright, produced the record in the previous hearing before the Commission and it is inferred from what has been said in the course of this hearing, that you will place considerable reliance upon what was found as a matter of fact by the Commission and what conclusions the Commission announced in the other case. It seems to me that we ought to take the fact which is indicated by this question and if it turns out that you want to pursue the line of inquiry thus opened further than you have present opportunity for doing, you will have the chance to do so.

The CHAIRMAN: We think he may answer the question in an unobjectionable form.

Mr. MATTHEWS: I am reminded by Mr. Macdonald that
1984 Classifications Nos. 5 and 6 were in the year 1889.

Mr. COLSTON: That is the one the Commission refers to in its decision.

Mr. MATTHEWS: Classification No. 6 if I recollect aright, was adopted in May, 1889.

Mr. COLSTON: Well, that will cover any classification.

Mr. MATTHEWS: By that time the net weight practice had ceased and it was just prior to the beginning of our former suit before the Commission?

Mr. COLSTON: (Referring to book.) No. 6 was adopted August 15, 1889 and No. 5 was adopted February 18, 1889. I think the question is unobjectionable in the matter of form, if your honors please. I will ask the stenographer to repeat it.

The stenographer repeated the question as follows:

"Mr. COLSTON: I want to ask whether that committee when approving classifications Nos. 5 and 6 took into account at all any carriage of articles embraced within any of the classes of that classification at net weights?"

Mr. KINGSBURY: No, sir.

Mr. COLSTON: What weights did the Classification Committee in making that classification approve?

Mr. KINGSBURY: The gross weights *in* actual weights.

1985 Mr. COLSTON: Were you a member of the Classification Committee at the time Classification No. 1 was adopted?

Mr. KINGSBURY: Yes, sir.

Mr. COLSTON: And Nos. 2, 3 and 4?

Mr. KINGSBURY: Yes, sir.

Mr. COLSTON: In making any of those classifications you may state to the Commission whether the Classification Committee took into account any carriage of any articles at weights other than at gross weights?

Mr. KINGSBURY: No.

Mr. COLSTON: Were you a member of the Classification Committee prior to the inauguration of the official classification?

Mr. KINGSBURY: Yes, sir.

Mr. COLSTON: Well, now, in making any of those classifications preceding classification No. 1?

Mr. KINGSBURY: Always actual, gross weights.

Mr. COLSTON: Then, the matter of net weights have no influence at all upon the making of any of the classifications?

Mr. KINGSBURY: Never.

Mr. COLSTON: You may cross examine.

1986 Cross-examination:

Mr. MATTHEWS: Mr. Kingsbury, you were examined in the former case of Procter & Gamble against the same railroads that are here, in the year 1889 in Washington City, were you not?

Mr. KINGSBURY: I was.

Mr. MATTHEWS: And you were examined by Mr. J. G. Brooks, the general counsel of the P. C. C. & St. L. Railroad at that time. You were present during the hearing at that time at Washington, were you not, during a considerable portion of the hearing in Washington?

Mr. KINGSBURY: I remember giving the testimony there.

Mr. MATTHEWS: Do you remember? Were you present during

the reading of depositions there and the taking of testimony of witnesses in which the net weight practice came up?

Mr. KINGSBURY: I do not think I was. I do not recall it.

Mr. MATTHEWS: You did not on that occasison testify to what you have testified here in your direct examination, did you?

Mr. KINGSBURY: I do not remember. I do not recall my testimony at that time.

1987 Mr. MATTHEWS: You do not recall that you did not testify as you have this morning?

Mr. KINGSBURY: I do not.

Mr. MATTHEWS: I suppose, if your honors please, to be entirely fair to the witness, I ought to submit his testimony to him to glance over.

The CHAIRMAN: If you claim his testimony in the former proceeding is inconsistent with what he now says.

Mr. MATTHEWS: I claim it is inconsistent to this extent. That was the subject of injuiry in that suit. He was examined by his own counsel and did not testify as he has this morning. Whatever presumption arises from that, I am entitled to, I suppose. If it is admitted by the other side that that is the case, it will save me putting it into the record.

Mr. COLSTON: We do not object to your putting in Mr. Kingsbury's testimony.

Mr. MAXWELL: We will not object to making a stipulation that he was not examined on the subject at all.

The CHAIRMAN: Your understanding is, Mr. Matthews, that Mr. Kingsbury was not interrogated on this subject at all in the former hearing.

Mr. MATTHEWS: No.

1988 The CHAIRMAN: And such inconsistency, if any, as you refer to is that arising out of the fact that he was not interrogated?

Mr. MATTHEWS: Well, the inconsistency of counsel.

The CHAIRMAN: I have known counsel to be inconsistent.

Mr. MAXWELL: Well, there is a presumption that the parties at that time——

The CHAIRMAN: Mr. Maxwell and Mr. Colston say that if their examination of the testimony sustains your remark about it that it may appear as a stipulation in this record that he was not interrogated and did not testify upon the subject at a former hearing. If you are not satisfied with that, you may put in his testimony. Of course, if you do so and put in any part of it, they will be at liberty to put it all in, or all that relates to this subject. Is there any further question you want to ask Mr. Kingsbury.

Mr. MATTHEWS: Mr. Kingsbury, you knew between 1885 and 1889 of the existence of the shipment of soap at net weights from certain points in the west, did you not?

Mr. KINGSBURY: I presume I did.

Mr. MATTHEWS: Is it not a fact that other members of that committee also knew of that fact.

Mr. KINGSBURY: I cannot state for them.

1989 Mr. MATTHEWS: Do you know as to Mr. McLeod, the general freight agent at that time of the Cincinnati, Hamilton & Dayton Railroad—he was a member at that time of the committee.

Mr. KINGSBURY: I think so. I presume he was a member at that time.

Mr. MATTHEWS: Do you not know that he knew of that practice?

Mr. KINGSBURY: I do not know it only as a matter of hearsay. I might have had that conversation with him and heard him say it was a fact, but I do not think the question ever came up between Mr. McLeod and myself or any other member of the official classification — that goods should be taken at net weights or any other weight than gross weights or actual weights.

Mr. MATTHEWS: It was not a custom entirely unknown to the Official Classification Committee to take certain articles at net weights?

Mr. KINGSBURY: It was only a matter of current knowledge to some people that some things were taken at net weights like soaps, but I do not know that it applied to anything else; but there was no arrangement or understanding between the Committee

1990 that things should be taken at net weights.

Mr. MATTHEWS: Well, it is a fact, however, that certain articles were specified in the classification to be shipped at net weights.

Mr. KINGSBURY: Never to my knowledge.

Mr. MATTHEWS: Was not that the case with flour as early as 1885—from 1885 to 1889?

Mr. KINGSBURY: Flour from time immemorial has always been taken at a certain rate, two hundred pounds to the barrel.

Mr. MATTHEWS: The actual weight of that flour in the barrel was 196 pounds?

Mr. KINGSBURY: Yes, sir.

Mr. MATTHEWS: And it was taken at 200?

Mr. KINGSBURY: Yes, sir.

Mr. MATTHEWS: Well, how was starch classified, Mr. Kingsbury, in the classification 1 to 6 of the Official Classification?

Mr. KINGSBURY: I think it was fifth.

Mr. MATTHEWS: Fifth class?

Mr. KINGSBURY: In carloads, yes sir.

Mr. MATTHEWS: The fact, however, was that during that time starch universally took the grain rates?

1991 Mr. KINGSBURY: Starch was put into the grain classification.

Mr. MATTHEWS: There was nothing to indicate that in the classifications from 1 to 6?

Mr. KINGSBURY: I do not remember as to the number of those classifications. You specified those two and there was a time when it was put into the same rating as flour and grain, took the grain classification.

Mr. MATTHEWS: That was done by the railroads irrespective of the classification committee, was it not?

Mr. KINGSBURY: Yes, sir; the rate-making power.

Mr. MATTHEWS: And that subject of giving starch grain rates was never discussed in the classification committee?

Mr. KINGSBURY: No, sir;

Mr. MATTHEWS: And yet it was a matter of current knowledge in the committee that it took grain rates?

Mr. KINGSBURY: It may have been, especially to members who were active in their service as freight men.

Mr. MATTHEWS: And the grain rate was considerable lower than the fifth class rate, the rate for starch in carloads?

Mr. KINGSBURY: It had to be made that way.

Mr. MATTHEWS: That is all.

Mr. COLSTON: In regard to any knowledge you had about
1992 there being any net weight practice in reference to soap, how did you get whatever knowledge you have—by report?

Mr. KINGSBURY: Hearsay; current report that would come to me.

Mr. COLSTON: Whereabouts did you hear that people were shipping at net weights—I mean in what locality were they doing that?

Mr. KINGSBURY: Well, I recall now near Cincinnati at Ivorydale.

Mr. COLSTON: Did you ever hear of it being done any place else? Had you at that time heard of its being done any place except at Cincinnati?

Mr. KINGSBURY: No, sir.

Mr. COLSTON: Who were the people you heard were doing it at Cincinnati?

Mr. KINGSBURY: The Procter & Gamble firm.

Mr. COLSTON: Had you heard of anybody else than Procter & Gamble doing it?

Mr. KINGSBURY: No, sir; never.

Mr. COLSTON: Well, now, you did not put soap into fifth class with the understanding that it should be taken at net weights?

Mr. MATTHEWS: I object.

1993 The CHAIRMAN: That has been already covered.

Mr. COLSTON: About this flour. I understand the shipment of flour at the arbitrary weight of 200 pounds—that is named in the classification, is it not?

Mr. KINGSBURY: Yes, sir.

Mr. COLSTON: And you say it has been a custom from time immemorial.

Mr. KINGSBURY: Yes, sir; from the time I first took any interest in railroad matters.

Mr. BAYLESS: How far back is that.

Mr. KINGSBURY: 1863.

Mr. COLSTON: In regard to starch, is it not a fact that starch in classifications 1 to 5 was in the sixth class instead of in the fifth.

Mr. KINGSBURY: I can not swear to that. I do not recall it now. I did not look up that question.

Mr. COLSTON: Then, you do not mean to say that starch was in the fifth class in classifications Nos. 1 to 6, inclusive.

Mr. MATTHEWS: That is a leading question.

The CHAIRMAN: Let him correct his testimony if he desires.

Mr. KINGSBURY: You asked me in reference to certain
1994 classifications. I have not those before me to see whether that was the fact or not. I do not recall whether it was really in the first or fifth.

Mr. COLSTON: You do not mean to be understood as testifying that starch was in the fifth class from the first to the sixth classification?

Mr. KINGSBURY: I cannot say that unless I am allowed to look at the classification.

Mr. COLSTON: That is all.

There being no further questions, the witness was excused.

1995 DAVID BROWN, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. COLSTON: Where do you live?

Mr. BROWN: In Chicago.

Mr. COLSTON: What is your business?

Mr. BROWN: First assistant general freight agent of the Grand Trunk Railway System.

Mr. COLSTON: Are you a member of the Official Classification Committee?

Mr. BROWN: Yes, sir.

Mr. COLSTON: How long have you been a member of that committee?

Mr. BROWN: From about June, 1887.

Mr. COLSTON: I will ask you to state whether in any classification of soap in the fifth class the committee put it there with the understanding that soap was to be carried or would be carried under such classification at anything other than the gross weight of the soap and the box?

Mr. BROWN: No, sir; the matter was never discussed or brought up in that shape?

Mr. COLSTON: What knowledge did you have while you
1996 were a member of the classification committee that soap was being carried in any locality at anything less than gross weights.

Mr. BROWN: Several years after 1887, we had in a general way—and in 1887 we found that quite a number of articles were being carried at net weights. For that reason we organized in 1886 an inspection bureau to stop such practices.

Mr. COLSTON: Did the classification committee ever approve of the carriage of soap at net weights?

Mr. BROWN: The matter never came before the committee in that way.

Mr. COLSTON: Answer the question whether they approved of it or not?

Mr. BROWN: No, sir.

Mr. COLSTON: You may cross examine.

Cross-examination:

Mr. MATTHEWS: I believe you stated that in the year 1886 you discovered that a good many articles were carried at net weights?

Mr. BROWN: Previous to that we had a suspicion that we were not being paid for the gross weight of the stuff we carried.

1997 Mr. MATTHEWS: That was the reason you established the inspection bureau?

Mr. BROWN: That is the reason we thought it a good idea to establish such a bureau?

Mr. MATTHEWS: In the year 1886, the members of the official classification committee, in a general way, knew of that?

Mr. BROWN: They must have known. I did not belong to the classification committee in 1886. In 1887 I joined it.

Mr. MATTHEWS: I meant 1887. The members that formed that committee in 1887, you think, must have known of that fact?

Mr. BROWN: Well, in a general way they would hear it the same as I did, I think.

Mr. MATTHEWS: And among other things they knew soap was being carried that way.

Mr. BROWN: I do not know. I do not know that I heard that soap was being carried at that time.

Mr. MATTHEWS: You are not able to say your railroad did not carry soap at net weights from 1885 to 1889 at Detroit, are you?

Mr. BROWN: I cannot say anything about that. Our Detroit agent gave testimony in Chicago recently. They probably

1998 did, because they carried many without being weighed and we presume the shippers are honest.

Mr. MATTHEWS: The fact was, that prior to the establishment of the inspection bureau the railroads all over the official classification territory were a good deal more lax in regard to weights than they are now. Is not that a fact.

Mr. BROWN: A good deal; yes, sir.

Mr. MATTHEWS: Mr. McLeod was a member of the committee in 1887?

Mr. BROWN: I believe he was. I could not say. I think he was.

Mr. MATTHEWS: Was not Mr. R. M. Fraser, the general freight agent of the Cincinnati, Washington & Baltimore—was not he a member in 1887.

Mr. BROWN: I could not say. He was general freight agent for some road in Cincinnati about that time.

Mr. MATTHEWS: Was not he on the Official Classification Committee?

Mr. BROWN: Not to my knowledge.

Mr. MATTHEWS: Was not he a member some time between 1887 and 1889?

Mr. BROWN: I do not believe he was a member of the Classification Committee at any time. I believe he was a member of the Middle Western States, which expired just previous to the Interstate

1999 Commerce Commission taking office. That was April, 1887.

Mr. MATTHEWS: Would not you have the means of finding out whether Mr. Fraser was not a member of the official classification committee in this office?

Mr. BROWN: The chairman of the Official Classification Committee is here. He can tell from his records.

Mr. MATTHEWS: He is not on the stand. Cannot you refer to the records?

Mr. BROWN: I presume Mr. Gill will let me have access to the records.

Mr. COLSTON: We will agree that if the records show he was it may go into the record in this case.

Mr. GILL: He was a member between 1887 and 1889.

Mr. MATTHEWS: I am willing to accept Mr. Gill's statement that he was a member between 1887 and 1889.

The CHAIRMAN: It is conceded that between 1887 and 1889 Mr. Fraser, referred to by the witness in his testimony was a member of the official classification committee.

Mr. MATTHEWS: And that he was at that time a general freight agent at Cincinnati?

The CHAIRMAN: Yes, sir.

Mr. MATTHEWS: Of the C. W. & B., the tracks of which are
2000 now owned by the B. & O. S. W.

Mr. COLSTON: Well, now they say he was not. Let us see. (Referring to book.) It seems that this classification committee at that time was divided into two sections, one called the eastern and the other was western. Mr. Fraser was connected with the western section of the committee. That is what Mr. Gill says.

The CHAIRMAN: Well, is the fact about it otherwise than appears by the concession that has just been put on the record? Anything further Mr. Matthews.

Mr. MATTHEWS: I supposed the gentlemen were not satisfied with their admission.

Mr. COLSTON: Oh, it is all right. We will let it go.

Mr. MATTHEWS: Did the Classification Committee, as such, ever approve the grain rates on starch from 1885 to 1889?

Mr. BROWN: Not to my knowledge.

Mr. MATTHEWS: That is all.

The CHAIRMAN: If I understand you, Mr. Brown, you say that during that period from 1885 to 1889 it was known in a general way that many articles were carried at less than actual weight?

2001 Mr. BROWN: That was the supposition of the railroad men, that we were not getting actual weight for stuff we carried.

The CHAIRMAN: In one way and another you believed that to be a fact?

Mr. BROWN: We knew the shippers wanted to get all they could for nothing.

The CHAIRMAN: That is one of the things that led to the organization of the inspection bureau?

Mr. BROWN: Yes, sir.

The CHAIRMAN: And the charging of rates on the actual weights carried?

Mr. BROWN: Yes, sir.

The CHAIRMAN: I understood you to say that in determining the class to which any article should be assigned, you did not, nor did the committee take into account the fact that that article had been carried at less than actual weight?

Mr. BROWN: Well, the official classification provided for flour, for instance,—flour 200 pounds per barrel and nails 100 pounds per keg. We got the actual weights except in cases where it was specified, in which cases it might be a few pounds less than the actual weight.

The CHAIRMAN: Did that influence the class to which any
2002 article should be assigned. Take flour, for example. Flour is always carried at a commodity rate, is it not?

Mr. BROWN: As a rule, yes sir.

The CHAIRMAN: The point seems to be whether the class into which any article was put was determined or influenced by the circumstance that any article could or might be carried at other than actual weights.

Mr. BROWN: No, sir.

The CHAIRMAN: Well, that is the point. Did the fact about carrying it in reference to its weight influence the class into which it was put?

Mr. BROWN: No, sir; never.

Mr. MATTHEWS: I understand you to mean by that, that so far as any consultation in the committee is concerned. You do not know what may have been in the mind of Mr. McLeod, for instance, or Mr. Fraser?

Mr. BROWN: No, sir; I am not a mind reader.

The CHAIRMAN: He is understood to speak in reference to the motives that influences his own vote and action and what he supposed influenced the committee. If there are no further questions, Mr. Brown will be excused.

The witness was excused.

2003 Mr. COLSTON: That is all we have on that line, if your honors please.

The CHAIRMAN: Well, what disposition will you make of the hearing now?

Mr. MAXWELL: I have said to Mr. Matthews, being advised of what took place yesterday that Mr. Warrington and I were talking last week as to when testimony was to be given on the soap classification. I stated to him that it would be taken on Wednesday and not before, and Mr. Warrington is entitled to rely on that statement. I do not think it is just to him to put in that testimony in his absence. We arranged to take the same train, but he has not come and he has a right to suppose that the testimony will not be taken until to-morrow.

The CHAIRMAN: It seems to be conceded, then, under the circumstances that we should not examine more witnesses until to-morrow.

Mr. BAYLESS: I think so. I notified Mr. Warrington.

The CHAIRMAN: Yes, sir; he so understood. We will adjourn the hearing until to-morrow morning at 10 o'clock, sharp.

At 12 o'clock m. the Commission adjourned until 10 o'clock a. m., Wednesday, August 8th.

2004 NEW YORK CITY,
WEDNESDAY, *August* 8, 1900—10 o'clock a. m.

Present: Commissioner Knapp (Chairman); and Yeomans.
The CHAIRMAN: Well, gentlemen, you may proceed.

NATHAN GUILFORD, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: Mr. Guilford, what is your business?
Mr. GUILFORD: I am traffic manager of the New York Central Railroad.
Mr. MAXWELL: How long have you been its traffic manager?
Mr. GUILFORD: About thirteen years.
Mr. MAXWELL: What was your prior connection with the railroad business?
Mr. GUILFORD: I had been the general freight agent of the Baltimore & Ohio and acted as commissioner for several years for the trunk lines—commissioner of the freight department.
2005 Mr. MAXWELL: How long have you been in the railroad service?
Mr. GUILFORD: Some forty years.
Mr. MAXWELL: What, if any thing, did you have to do with the adoption of the recommendations of the Official Classification Committee which were afterwards incorporated in Official Classification No. 20?
Mr. GUILFORD: The recommendation of the committee is submitted to me for vote and I vote upon it. With regard to Classification No. 20, I had two of my assistants go over the report of the Committee and make a report to me of their views as to any changes recommended and I went over their report and finally voted on the recommendation.
Mr. MAXWELL: Was your attention directed in any way, and if so, how, to the change which was made by Official Classification No. 20 in the classification of soap?
Mr. GUILFORD: Yes, sir; my attention was directed to all the important changes and it was particularly attracted to soap because the report restored soap to its former classification, fifth class, and there had been a good deal of contention about it for some years past; also I remember that Mr. Macdonald called at my office and expressed his views to me about the proposed change in soap and we discussed the matter then. It was particularly considered by me.
2006 Mr. MAXWELL: Will you state whether you approved of the placing of soap in fifth class?
Mr. GUILFORD: I did.
Mr. MAXWELL: Will you please state to the Commission the reasons which induced you to approve of that change and the grounds upon which you think soap is properly placed in the fifth class?
Mr. GUILFORD: I am not an expert in the classifications and am not personally familiar with all the characteristics and details of the

different articles offered for shipment so as to always rely on my own judgment about it. I am always inclined to give great weight to the recommendations of the Classification Committee because they have made a special study of the subject of classification and I have not. With regard to soap, I knew from discussions and conversations that had taken place for some years past that it was a general belief that fifth class was the proper place for soap. It had been put there and it had only been taken out in consequence of a decision of the Interstate Commerce Commission, and it was believed that in that hearing which led to that opinion all the facts had not been presented and laid before the Commission and that if they had the decision would have been different. I knew generally
2007 that soap was—I believed it was entitled to a low rate, and while not in the lowest class, it is in the next to the lowest. It is in the same class with the coarser articles that are dealt in by grocers generally. The what might be called, characteristic of the sixth class is that it contains very coarse articles; such things as paving stones, brick, lime, sand and all those very coarse articles are naturally in the lowest class. It seemed to me that there was no reason to question the report of the committee in that respect.

Mr. MAXWELL: It has been suggested that there are certain analogies between soap—physical or otherwise—and articles that have been permitted to remain in the sixth class, and that soap is not analogous to articles, or to many articles, that are in the fifth class. Will you please give us your views with respect to the physical analogies as affecting a proper classification, especially with reference to this article of soap?

Mr. GUILFORD: Any comparison between the physical characteristics of two articles as determining their classification is inconclusive and proves nothing to my mind, for the reason that the classification is not governed solely by those features of the commodities
2008 that affect their cost or transportation. We find, for example, in the fifth class, the same class as soap, is hay, an article which is light in weight, which is bulky and which is particularly susceptible to damage by fire or other causes. If hay were classified in accordance with its making desirable freight from a transportation point of view it would be in one of the higher classes naturally on account of its physical quality. Soap is compact and heavy. Yet those two are in the same class, because there are other factors that control the classification than the elements of bulk, weight, compactness and cost of handling and so on. If we could be governed simply by those qualities, we really should not need any classification but we could charge an average rate on everything and get the same revenue, if that were possible. But it is not possible, because the articles that require a cheap rate would not move to market. They have to be placed where they do not belong on their merits as freight. They have to be placed below where they belong as freight. That destroys the utility of comparison. The railroads in order to sustain themselves have to have a reasonable average rate on all the freight they carry, and as they cannot charge a uniform

rate on everything, for commercial reasons, it is necessary to
) divide the different commodities into groups, each taking a
different rate but in the aggregate yielding a fair return to
carrier, and that permits the carriage of articles that will not bear
r fair proportion of the freight. If I may illustrate, it is the
e principle that the Government applies in the classification of
ls. They pay for the transportation of the mails a uniform rate
pound, no matter what the class is, whether letter or paper.
y charge on letters two cents an ounce, which is thirty-two cents
ound, and they charge on printed matter—periodicals, news-
ers—direct from the office of publication, one cent a pound or
e 97 per cent. less than they do on letters, the cost per pound
ıg the same on both.

Ir. COLSTON: You mean the cost of transportation?

Ir. GUILFORD: The cost of transportation to the Government
ıg the same on both. They make that discrimination which is
erally regarded as a proper one, I believe. The profit they make
the higher one on the letters is not an undue burden on that
s of matter and it enables the government to give a wide circula-
to newspapers and periodicals, which is in the public interest,
which they could not do unless they made this classification dis-
ninating according to the class of matter.

Mr. MAXWELL: It has been suggested particularly by the
0 Procter & Gamble Company that there were analogies or want
of analogy between soap, starch, rice, cereal products and cer-
chemicals which ought to affect the classification of soap. Can
give us any information with respect to those articles with which
) is being compared in this hearing?

Ir. GUILFORD: I do not think that the comparison shows any-
ıg unless the articles compared are related. Each class contains
ery large number of articles that are entirely unrelated to each
er. With regard to starch, there are commercial reasons, such
I have stated, why that cannot be charged any higher than it is.
th regard to rice, I presume that was put into the lowest class be-
se it is an imported article that is used by brewers in the interior
l it may go by any gateway, either those that use the Southern
ssification, that go from the Gulf or the Southern Atlantic ports,
by the North Atlantic ports. It is again a commercial reason.
requires a low rate. Starch is a product of grain. The grain is
ught east at a low rate and starch is manufactured in the West
l in the East. It requires a low rate for the same reason that
ır does. Flour yields to the railroad only about one half of
what wheat does per car. Yet it is in the same class for
1 commercial reasons. I dwell on this commercial necessity
point, not because it has any special application to the classi-
tion of soap that I know of, but simply to show the inconclusive-
s of comparisons and analogies between one commodity and
ther, calling attention to its being equally desirable as freight
some other article that is in a different classification. That is
irely inconclusive. Those qualities all have more or less influence,
they are not controlling.

Mr. MAXWELL: You have been in the railroad service about forty years. Perhaps you can give us some information with respect to how these classifications were developed.

Mr. GUILFORD: Why any classification was made or why Classification No. 1 was made?

Mr. MAXWELL: Why any classification was made and when, according to your observation, the first classification was made and how it came to be made.

Mr. GUILFORD: My recollection does not go back to the origin of things. I do not know when the first classification was made. I have already given reasons why a classification was necessary. The railroads from New York to Chicago get an average rate on the traffic from New York to Chicago of about forty cents per hundred pounds, taking all classes together.

2012 The CHAIRMAN: Your statement is limited to westbound traffic?

Mr. GUILFORD: The forty cent rate is limited to westbound traffic. If we could get that on everything we should not need any classification—if we could get the same earnings that we do now. But, as commercial necessities come in and require the carriage of a great many commodities at less than the average rate, a classification is necessary grouping the articles in different groups with different rates attached to each, which in the aggregate will produce a reasonable average rate. That is a necessity which must be apparent to everybody. A classification that was based strictly upon the physical characteristics of the commodities carried would be destructive of the interests of manufacturers, producers and the railroads. It would limit the traffic to market, reduce the price of farm land and the products and stop the export of all kinds of coarse freight where we are in competition with other countries to supply the foreign markets. It is obvious that a grading of the rates is necessary, and that grading is done by means of a classification with different rates attached to each class.

Mr. MAXWELL: Then, when you first went into the railroad service you found a classification?

2013 Mr. GUILFORD: A great many of them; hundreds of them. Each railroad had its own for its own particular use—no two exactly alike—and then groups of railroads had common classifications for joint business.

Mr. MAXWELL: Prior to the Interstate Commerce act what, if any, steps towards cooperation of railroads in fixing a classification had taken place?

Mr. GUILFORD: Well, there were a number of classifications which were common to certain groups of railroads applicable to certain kinds of business. There was a trunk line classification, so called, which applied to westbound freight from the seaboard through. That had four classes, I think. There was an eastbound classification apply to through eastbound freight from territory east of the Mississippi River. That had thirteen classes. Then, there was a Middle States Classification. There was what they called an East and South bound classification from Buffalo and the interior points of

New York. There were a number of others. The New York Central was interested in all these. But there were a number of others in other sections of the country that we were not parties to. I cannot recapitulate them all. Then each road had its own classification which applied to its local business from one station to
2014 another, which as a rule was considerably higher than these classifications.

Mr. MAXWELL: What influence did the Interstate Commerce Commission have in bringing about fewer classifications or fewer groups of classifications?

Mr. GUILFORD: Early in 1887, after the Interstate Commerce Law had been passed and before it took effect, a largely attended meeting of railroad officials was held to determine what action was necessary in order to bring the practice of the roads within the law, so far as it was opposed to the law, and a committee was appointed to bring the tariffs into line under the long and short haul clause. That committee after working some time had it reported to the general meeting that it was not sufficient to have the tariff rates in line, but that a uniform classification was essential for the reason that while the rates upon third class from Albany to the West would not exceed the rates from New York to the West by way of Albany, yet if the commodity happened to be in first class in the local classification and fourth class in the through classification, the actual charge on the commodity might be greater for the shorter distance. So the only way to insure compliance with that clause of the new law was to have the same classification used on local and
2015 on through business. That view was adopted and a committee was appointed with all possible speed to consolidate these many classifications in the territory now covered by the Official Classification—those many into one. That was done about the time the law took effect.

Mr. MAXWELL: Are you sufficiently familiar with the Official Classification Committee to let us know what sort of representation of different interests and different roads and different sections of the country it presents and how the members are selected, with what end in view? You said you give great weight to their recommendations. I would like to know what weight their recommendations might be entitled to in reference to the constitution of that committee.

Mr. GUILFORD: That committee represents all sections of the territory to which the Official Classification applies. There are delegates from the New England roads, from the Atlantic States and from the Middle States as far West as the Mississippi River and as far South as the Ohio River. They are officials of railroads, all of them, but on the committee they do not represent their own railroad; they represent their territory. They are officers of railroads who are in touch with the shippers on their lines and who have made a
2016 specialty of classification matters. I think the committee was originally nominated by Mr. Fink. The members of the committee were originally nominated by Mr. Fink when he was

chairman of the joint committee and his nominations were ratified by the railroads forming the joint committee.

Mr. MAXWELL: It is probably known to the Commission but we would like to put upon the record who Mr. Fink was and his connection with the railroad service.

Mr. GUILFORD: Mr. Fink was for many years chairman of the Trunk Line Association, Trunk Line Commissioner and chairman of what was known as the Joint Committee, which was the committee of the two associations, the Trunk Line Association and the Central Traffic Association.

Mr. COLSTON: That was Albert Fink?

Mr. GUILFORD: Albert Fink, yes, sir. He hardly needs any introduction to anybody who has had any connection with railroads.

Mr. MAXWELL: What was his standing as a railroad man?

Mr. GUILFORD: Well, there was none higher.

Mr. WARRINGTON: Is that competent.

Mr. MAXWELL: We expect to show, if your honors please, that this classification is dealt with in the most serious and careful
2017 and thorough way; that is the result of the deliberations of the most skillful and experienced men in the world.

The CHAIRMAN: I think it is competent, Mr. Warrington. Of course we all know about Mr. Fink, but probably we cannot take judicial notice of his standing and experience as a railroad man and therefore it is perhaps suitable that enough should be said about him to go upon the record.

Mr. GUILFORD: There was no officer in any railroad service that had as high a standing and reputation as Albert Fink. He enjoyed the confidence of everybody. There was no question if dispute between railroads but what all parties were willing to leave it to Albert Fink's decision. He had made railroad problems a study of his life. He had published many pamphlets and books upon various railroad problems. He was an eminent civil engineer, and his reputation was world wide; he was almost as well known in Europe as he was in the United States. No man ever had a higher reputation than Albert Fink for his ability, integrity and wide knowledge.

Mr. MAXWELL: So far as you know, has there ever been any disagreement among traffic men or classification men as to the class in which soap ought to be placed.

2018 Mr. GUILFORD: So far as I know there has not.

Mr. WARRINGTON: I think we ought to object to that, your honors. We would have a right, it seems to me, to meet those men who might concur and know why each one agreed with the other. In other words, it is getting a conclusion before the Commission without stating why the conclusion was reached.

The CHAIRMAN: Mr. Guilford, does it require unanimous action of that committee to fix the classification of articles?

Mr. GUILFORD: No, I think a majority. I do not know. I cannot answer your question positively. The recommendation comes to us as the recommendation of the classification committee. Whether it is a majority or a two-thirds or a unanimous vote is not stated. It comes personally to us in that way.

Mr. MAXWELL: What would be the effect of any important railroad disagreeing with the recommendations of the committee?

Mr. GUILFORD: The effect would be that the railroad would not adopt the obnoxious clause, I suppose. The effect of that would be that if the objecting railroad wanted a lower class than the
2019 committee recommended, they could probably force all the others down to it, but if they wanted a higher class, they probably could not get it on account of competition.

Mr. MAXWELL: That is all.

Cross-examination:

Mr. WARRINGTON: Mr. Guilford, did you attend any of the meetings or sittings of the classification committee which produced and recommended Official Classification No. 20?

Mr. GUILFORD: I did not.

Mr. WARRINGTON: Do you know why that committee assembled to consider the subject of reclassification?

Mr. GUILFORD: They assemble regularly—periodically—not exactly regularly.

Mr. WARRINGTON: No, I am asking you what was the occasion, if you know, of the meeting which brought forth the classification in dispute?

Mr. GUILFORD: I do not know of anything more than that it was the time for their regular meeting to consider those questions. Between meetings of the classification committee there are always a number of communications from the public or from the rail-
2020 roads that go to the chairman of the committee and are investigated by him—a preliminary investigation of the facts—and they are docketed and kept for the next meeting of the committee, for discussion at the next meeting of the committee. Accordingly, after several months have elapsed after a meeting of the committee, there is a lot of business for them and the chairman calls a meeting of the committee when in his judgment it is necessary and proper to take cognizance of the business and the various propositions that are in the hands of the chairman for submission to them.

Mr. WARRINGTON: Do you mean to state that the classification committee had letters relating to each one of the articles which were changed in the classification?

Mr. GUILFORD: By no means. I do not know what letters they may have had. I was only stating generally the circumstances which make periodical meetings of that committee necessary?

Mr. WARRINGTON: I am not asking now what happened generally. I am asking what brought about this particular meeting which brought forth this classification.

Mr. GUILFORD: You will have to ask some witness who knows. I do not know.

Mr. WARRINGTON: You do not know?

2021 Mr. GUILFORD: No, sir.

Mr. WARRINGTON: I will ask you if it was not in conse-

quence of the desire of the railroads for more revenue and if that was not the reason for the meeting and the action of the committee?

Mr. GUILFORD: I am unable to say what was the reason for calling the meeting of the committee at that time.

Mr. WARRINGTON: Well, let me pass from the reason for holding the meeting. Do you not know that the members of the committee were urged by the railroad companies to adopt a new classification for revenue purposes, and did you not in substance say so.

Mr. GUILFORD: I can speak for our own railroad. One of our officers is a member of the classification committee and he was advised at the coming meeting of the committee—he was impressed with the idea that we ought to have more revenue—and at the coming meeting of the committee that that question ought to be considered by them.

Mr. WARRINGTON: Was not such instruction or impression generally given or made by the respective companies on their committeemen?

Mr. GUILFORD: I think it likely but I have no knowledge on the subject.

2022 Mr. WARRINGTON: Was there not an understanding between the representatives of the several railroad companies involved in the Official Classification territory to that effect?

Mr. GUILFORD: Not that I know of—no understanding on the subject. I have no doubt that every railroad felt the necessity of getting more revenue, but that there was any understanding, that there was any conference or that the classification committee was called for that purpose or had any instructions, I am not competent to say. I do not know.

Mr. WARRINGTON: Do you know and can you with precision state what facts were omitted in the presentation of the question of classifying soap which resulted in the finding of the Commission in 1890?

Mr. GUILFORD: I understand that it was not shown——

Mr. WARRINGTON: I am now asking for your knowledge, if you know what the facts were.

Mr. GUILFORD: I suppose I cannot speak from knowledge except that I was there and heard the testimony and read it carefully, can I?

Mr. WARRINGTON: Well, then, if you did that——

Mr. GUILFORD: I did not.

Mr. WARRINGTON: What facts were there that were omitted?

2023 Mr. GUILFORD: If I cannot state what my belief and understanding is, I cannot answer.

Mr. WARRINGTON: Then, I will ask you to state your belief and understanding of the facts which you say were omitted.

Mr. GUILFORD: My belief and understanding is that the fact was not presented to the Commission that the practice of charging net weights on soap was not general. I do not think that the evidence was shown to the Commission that the charging of net weights on soap from Procter & Gamble was a discrimination in their favor and that the soap manufacturers of the country generally did not enjoy it, did not enjoy the same favor. My belief is that the Interstate Commerce Commission understood and made their decision upon

the understanding that it was a recognized practice to charge net weights upon soap shipments from different soap manufacturers and were not aware that it was a secret concession made to certain favored shippers and denied to others.

Mr. WARRINGTON: Have you any further answer to make to the last question I put?

Mr. GUILFORD: I do not think of any now.

The CHAIRMAN: Mr. Guilford, that seems to mean that for some reason or other the Commission was led to believe at that
2024 time, or drew the inference, that as a matter of general practice soap was shipped at net weights? That is what your statement amounts to?

Mr. GUILFORD: That is what I mean, yes sir.

Mr. WARRINGTON: What you know in that behalf is what was made to appear by the Commission's report and decision, is it not?

Mr. GUILFORD: It is made to appear by that, and my view has been and is that the case of the railroads was not handled as it ought to have been; that evidence was not put in that ought to have been put in.

Mr. WARRINGTON: Well, you had no other means of knowing what was in the Commission's mind or the minds of the individual members of the Commission except as they disclosed that through their decisions?

Mr. GUILFORD: That is all.

The CHAIRMAN: Pardon me, Mr. Warrington. He stated just now—and that is the reason I asked the question—that he read the testimony.

Mr. WARRINGTON: No, he said he did not.

Mr. GUILFORD: I understood that I was to speak only from strictly personal knowledge and I said as I had not been present at the hearing and heard all the arguments and testimony I could not
2025 speak from personal knowledge, but only from what I had read and heard of it.

Mr. WARRINGTON: So I understand you did not hear the testimony?

Mr. GUILFORD: I do not think I did.

Mr. WARRINGTON: You have not read the testimony?

Mr. GUILFORD: Not in full.

Mr. WARRINGTON: I suppose you recall the fact, do you not, that that controversy concerned only carload lots and did not touch upon less than carload lots.

Mr. GUILFORD: No, that was not clear to my mind. I have not looked at it for so long that I did not recall that. It referred only, I believe, to laundry soap and not to all kinds of soap.

Mr. WARRINGTON: Do you know whether the classification committee took up soap when it recommended the adoption of Classification No. 20 and discussed it upon its merits?

Mr. GUILFORD: I do not know what took place in the session of the Classification Committee. I am not a member of it and have no knowledge of that point.

Mr. WARRINGTON: Then, you were induced to adopt their recom-

mendation by reason of your faith in what the committee must have done?

2026 Mr. GUILFORD: My faith in the committee gave great weight to their recommendation, but their recommendation was not controlling and I exercised the use of my independent judgment upon the adoption for the New York Central Railroad of their recommendation in respect to soap as in respect to other changes.

Mr. WARRINGTON: I believe you said in your testimony before the Commission in the early part of this year or possibly in December of last year that the reason why a horizontal advance was not desired for the purpose of raising revenue was something in relation to the local rates on the New York Central, did you not?

Mr. GUILFORD: I do not recognize that as my statement.

Mr. WARRINGTON: Did you not say that you wanted more local revenue on your business moving 100 miles or less?

Mr. GUILFORD: I do not think I did.

Mr. WARRINGTON: And that that could be gotten by horizontal advance?

Mr. GUILFORD: No, sir; I do not think I did. I should like to have my testimony read if I said anything that could be construed in that way.

2027 Mr. WARRINGTON: Well, we will come to that again if we can find it. You do regard soap as a desirable article of freight, if I understand you?

Mr. GUILFORD: Yes, sir.

Mr. WARRINGTON: Why?

Mr. GUILFORD: Because it is compact and heavy and not particularly liable to damage. It fulfills those conditions that make freight desirable to a carrier.

Mr. WARRINGTON: Do you know of any other manufactured article more desirable than soap in view of the reasons you have assigned, its physical characteristics?

Mr. GUILFORD: I do not think of any. Soap is about as good freight as any other manufactured article I think of. Well, soap and canned goods I should say were about on a par in that respect. They are about the same weight and are shipped in the same kind of packages.

Mr. WARRINGTON: I should think that you would have to say that soap is better than canned goods. In the canned goods, if the package or the can is broken, the contents of the package are lost. If the can breaks in a collision which contains the goods the contents are lost absolutely.

Mr. GUILFORD: Well, in all my experience I do not think I know of a case where we had to pay damages for loss. We may have had cases where we had to pay on account of the lot being short.

2028 Mr. WARRINGTON: If the can is crushed and the label spoiled, that is a damage, is it not, even in addition to the breakage of the package containing the cans?

Mr. GUILFORD: It is a very small consideration, the risk of damage either to canned goods or soap. They are of very little importance because the loss or damage on either of them would be very trifling compared with the revenue they produced.

Mr. WARRINGTON: What is the comparison in value of the canned goods and soap?

Mr. GUILFORD: That I do not know.

Mr. WARRINGTON: Is not that an element to be considered?

Mr. GUILFORD: Yes, sir; that is one of the elements.

Mr. WARRINGTON: What is the comparison in tonnage as between soap and canned goods?

Mr. GUILFORD: Well, I have never seen the statistics. From general observation I should say that canned goods was much heavier tonnage, but I could not swear to it. I have never seen the figures compared.

Mr. WARRINGTON: I think we have found what we wanted. Reading from page 168 of your testimony at Washington in December last these questions were put by the Chairman:

2029 "The CHAIRMAN: You say, for example, that the New York Central being confronted with the necessity for larger revenues on the traffic it was carrying, it decided as a matter of its own policy that instead of advancing the rates generally it would change the classification in order to accomplish the same result.

"Mr. GUILFORD: Yes, sir.

"Com'r CLEMENTS: There are no rates named in this classification are there?

"Mr. GUILFORD: No, sir.

"Com'r CLEMENTS: It does not include the rate?

"Mr. GUILFORD: No, sir.

"Com'r CLEMENTS: What assurance is there that that will increase the revenue except in conjunction with rates to be charged under those classes?

"Mr. GUILFORD: The way I look at it, the business covered by that classification is business that goes from one station to another on the railroad, nearly all of it; nine-tenths of it is business that goes 100 miles or less, and that business moves principally in less than carload lots. It is a business that does not give a railroad back one dollar for another taken as a whole, that short haul, less than

2030 carload business. In these days the terminal expense of a railroad company is a very great factor and the most important factor in the cost of the transaction. It costs more to handle the freight at destination than it does to pull it there. You have two terminals on a railroad and you have the terminal expense at both those places. The little shipment, of one, two or three hundred pounds at the local rates of a railroad—seven, eight or nine cents a hundred—will hardly give money enough to pay the men for unloading the car, handling the stuff in the station, billing it and so on. It is a business that the railroads believe is done very often at a loss, but conditions are such that they cannot get much out of it. Now, that is the business we need more revenue on, and if we leave it in a low class in less than carloads our local revenues are disturbed that way, but if we have it in a higher class, that protects our local revenues. Then, if the necessity exists we can always make a commodity tariff on a through shipment. As Mr.

Gill says, we want to keep the tariff moving over our lines and if a higher classification is going to stop that, we can make a commodity tariff on the article and not disturb this short haul business which a low rate ruins."

Do you remember that?

2031 Mr. GUILFORD: Yes, sir; that is all right.

Mr. WARRINGTON: Then, one of the principal reasons which move your company to the action it has taken, as you have described, both upon its committeeman and upon the recommendation of the classification committee, was what is stated in this answer just read of yours.

Mr. GUILFORD: That necessity was quite present in my mind and always is, that is, the necessity of getting better pay for the kind of service spoken of—in that short haul, light weight service that is spoken of in my testimony there. It was not the only thing, though. I did not shut my eyes to the through business. The testimony that you have just read there grew out of the claim in that case at Washington that we had advanced commodities 15 cents a hundred pounds, from 35 cents to 50 cents, and so on. It was spoken of as an outrageous advance, putting up the rate 50 per cent. at one time; that it was excessive and unreasonable to advance them that much. My testimony was to make it clear that while the advance from New York to Chicago was 15 cents, as claimed, that 90 per cent. of the business was only advanced one or two cents, being the short haul business, the rate going up from 12 to 14 cents, or something like that. That was the cause of dwelling so much on that short

2032 haul business.

Mr. WARRINGTON: You knew the percentage of advance, say fom Cincinnati to Cleveland, was out of all proportion to the advance from Chicago to New York, did you not?

Mr. GUILFORD: I do not know what the rates are from Cincinnati to Cleveland.

Mr. WARRINGTON: Then, you are not prepared to speak on that feature of it?

Mr. GUILFORD: No, sir; I am not.

Mr. WARRINGTON: Then, you cannot say, can you, that the percentage of increase from Chicago to New York was any greater than it was for short hauls?

Mr. GUILFORD: Much greater than it was for short hauls on the New York Central Railroad.

Mr. WARRINGTON: That is all you can speak of?

Mr. GUILFORD: That is all I can say about it. I am not familiar with the territory outside as to local rates.

Mr. WARRINGTON: Do you know what effect the reduction of 20 per cent. upon less than carload lots—say 20 per cent. below third class—had upon the short hauls in the east, by way of restoring the old classification or the old rate?

Mr. GUILFORD: Yes, sir; it had the effect on short hauls

2033 of practically restoring the old rate. It gave the railroads no benefit over the previous classification for short hauls.

You had to get a haul of some distance before it made any increase.

Mr. WARRINGTON: Now, you speak in that answer and you have spoken in the answer you made last December—and you have spoken incidentally or directly of it this morning—of employing commodity rates to meet commercial conditions. Let us apply that to starch for a moment. Do you know what the export of starch is per annum?

Mr. GUILFORD: No, I do not. I have no idea.

Mr. WARRINGTON: Does the control of the supply of an article have any effect upon the question of freight rates?

Mr. GUILFORD: The control of the supply?

Mr. WARRINGTON: Yes, sir.

Mr. GUILFORD: As to whether it is controlled by a combination of individuals?

Mr. WARRINGTON: I do not care whether it is a combination of individuals or anybody else.

Mr. GUILFORD: I wanted to get your meaning. The control by certain parties?

Mr. WARRINGTON: Yes, sir; whether that has practically any influence on what you call fixing rates according to com-
2034 mercial conditions.

Mr. GUILFORD: No, I do not think it has any whatever.

Mr. WARRINGTON: Suppose an article is controlled by "A" in its production. The effect of raising rates would be simply to induce "A" to place the increase rate on the consumer, would it not?

Mr. GUILFORD: If he had no competition.

Mr. WARRINGTON: Precisely.

Mr. GUILFORD: Well, the question of whether there is competition depends largely, if not entirely upon the control of the supply, does it not?

Mr. GUILFORD: Yes, sir; I suppose it does.

Mr. WARRINGTON: Then, it is true that one of the commercial conditions which would influence a classification is the control of the supply, is it not?

Mr. GUILFORD: Why should that influence the classification? I do not see that.

Mr. WARRINGTON: Simply because there would be nothing to prevent that article from moving if the controller of the supply could transfer the extra charge that the railroads would impose to the consumer.

Mr. GUILFORD: Well, he might. I did not fully under-
2035 stand your question. The imposing of an extra charge might reduce the consumption for one thing. That would tend to lessen the traffic of the railroads.

Mr. WARRINGTON: That is the one thing you would have to consider. Now, if it was a prime necessity, say one of the necessaries of life, and it were so controlled by "A," there would be no commerical necessity moving or requiring the classification committee or the railroads to reduce the rates on that, would there?

Mr. GUILFORD: No commercial necessity, no.

Mr. WARRINGTON: You would know that that article would be consumed because the people would have to have it, would you not?

Mr. GUILFORD: Yes, sir.

Mr. WARRINGTON: You would know that the person who controlled the supply of the article could transfer your charge to the consumer, would you not?

Mr. GUILFORD: Yes, sir.

Mr. WARRINGTON: So the control of the supply does affect what you call commercial conditions?

Mr. GUILFORD: Not in the way you mean. "A" is not that sort of man. He says to the railroad, you must put your rate down, and by the power which the control of that traffic would give
2036 him he would prevent the railroads from putting it up. He would keep it down and the railroads would not have any chance of putting it up if they wanted to.

Mr. WARRINGTON: Now, take, for instance, starch. Was the reason why starch was given its rate the command of the producer or the controllers of the production of starch?

Mr. GUILFORD: You mean the commodity rate?

Mr. WARRINGTON: Yes, sir.

Mr. WARRINGTON: Did you make that commodity rate because the controllers made you do it?

Mr. GUILFORD: We made that commodity rate because we could not get the business without it. We know that the corn has to be brought from the west to make that starch out of, and we know that there are starch manufacturers in the west that pay the freight on the starch and not on the corn to get it to the east.

Mr. WARRINGTON: Well, then, the manufacturers of starch did not require you to fix that rate.

Mr. GUILFORD: I never saw or interviewed a manufacturer of starch on the subject at all.

Mr. WARRINGTON: Now, Mr. Guilford, I am taking you on the statement you made a few minutes ago. You said that where an article is controlled in its supply that then the controller fixes
2037 the rate and not the railroads. I want to know if that is true in reference to starch.

Mr. GUILFORD: No, I beg your pardon. I did not use that language.

Mr. WARRINGTON: Then, I misunderstood you. What did you mean to say in that regard?

Mr. GUILFORD: You were placing the controller in the position of being at the mercy of the railroads.

Mr. WARRINGTON: No, I was not.

Mr. GUILFORD: Well, that is the way I took it, that if the man controlled all the whole thing the railroads could put up their rate as much as they pleased knowing that it would not affect the shipment; the controller of the article would add the freight on and make the consumer pay it. You are putting the controller in the attitude of a victim of the railroads.

Mr. WARRINGTON: I did not mean to creat- that impression. I

was not attempting to give testimony. I was only seeking information. Now, do you or do you not claim that the practice is that where a prime necessity of life is controlled by a particular individual, that individual fixes the rates of freight?

Mr. GUILFORD: No, he does not.

2038 Mr. WARRINGTON: Who does?

Mr. GUILFORD: The rates of freight are fixed in that case, the same as in any other case, by the laws of competition.

Mr. WARRINGTON: As fixed by the railroad companies?

Mr. GUILFORD: Well, they are fixed by the railroad companies perhaps not where the railroad companies want them fixed. They are fixed in the face of competition.

Mr. WARRINGTON: Let us not lose sight of this: Do you or not recognize the fact that the control of the supply affects the commercial conditions of which you have spoken?

Mr. GUILFORD: I have not thought about the matter at all and I do not know that my opinion is worth anything about that. I would never think in discussing a rate who controlled the supply or whether it was controlled or not.

Mr. WARRINGTON: You say you yield to commercial conditions rather than to physical characteristics?

Mr. GUILFORD: I say they are controlling at times.

Mr. WARRINGTON: Well, they are controlling at times. Take it in that form. Let us take the article of sugar. You know, do you not, that it is controlled virtually by one head, no matter what name you may give it.

Mr. GUILFORD: No, sir; I do not.

2039 Mr. WARRINGTON: Well, do you know where the sugar comes from that comes into this country? Do you know the proportion that is imported in comparison with that that is produced in this country?

Mr. GUILFORD: No, I do not know about the raw sugars what proportions are produced here and there.

Mr. WARRINGTON: Well, do you know what portion of the sugar that is consumed in the United States is imported?

Mr. GUILFORD: Well, I suppose it is nearly all imported.

Mr. WARRINGTON: Well, you know very well, do you not, that a combination controls that imported article? Is it possible that you can live here in New York and occupy the position you do and not know anything in that regard?

Mr. GUILFORD: That is true, sad as it may be. I have not interested myself in the question of what countries raw sugar came from.

Mr. WARRINGTON: I suppose you do not know anything about the sugar refineries of this country? I suppose you do not know where they are?

Mr. GUILFORD: Oh yes, I know something about the refineries.

Mr. WARRINGTON: Where are the refineries?

2040 Mr. GUILFORD: There are refineries at Brooklyn, Jersey City, Yonkers, New York, Philadelphia, and San Francisco.

Mr. WARRINGTON: And one at Boston.

Mr. GUILFORD: Yes, sir.

Mr. WARRINGTON: Do you know who controls them?

Mr. GUILFORD: Different people. The American Sugar Refining Company controls a number of them and there are a number that they do not control, as I understand.

Mr. WARRINGTON: Well, whatever you may know on that subject, is it not a fact that whatever rate you put upon sugar the controllers of the sugar can transfer the excess of rate to the consumer?

Mr. GUILFORD: No, I do not think they have that power.

Mr. WARRINGTON: You do not?

Mr. GUILFORD: No, I do not think they have.

Mr. WARRINGTON: And that would influence you, no doubt did influence you—that opinion—in ratifying the action of the classification committee?

Mr. GUILFORD: The consideration never occurred to me at all.

Mr. WARRINGTON: Now, if it were controlled in such a way
2041 that it would not affect the producer of refined sugar, that ought to affect the question of classification, ought it not?

Mr. GUILFORD: Why? I do not see why.

Mr. WARRINGTON: Well, let us take it in comparison with articles that are in competition. Suppose the sources of supply are not controlled by one individual but by as many as hundreds so that the competition in production goes hand in hand with the competition in selling. Now, does that condition of an article have anything to do or ought it to have anything to do with classification or rates?

Mr. GUILFORD: I do not see that it ought or that it does. The classification would be based upon the physical characteristics of the different commodities shipped absolutely if it were not for commercial reasons. Those commercial reasons when they force themselves upon us have got to be considered and in some cases upset the other reasons. But we do not go about groping for a theory to find a commercial reason. They are forced upon us and we have to pay attention to them.

Mr. WARRINGTON: Well, no matter how they come into prominence they do influence classification, do they not?

Mr. GUILFORD: Sometimes, yes sir.

2042 Mr. WARRINGTON: You must have something to govern you. You say physical characteristics will not do. Then you say commercial conditions affect you occasionally. What other things affect besides physical characteristics and commercial conditions?

Mr. GUILFORD: Physical characteristics govern in the absence of commercial conditions that force themselves into consideration and require the modification of the class that physical conditions would give it.

Mr. WARRINGTON: Now, take sugar and soap. They are in the same classes, both in carloads and less than carload lots. Have not the conditions touching the supply of sugar very materially changed since 1890?

Mr. GUILFORD: I do not know.

Mr. WARRINGTON: Well, have the conditions controlling the supply and distribution of soap changed since 1890?

Mr. GUILFORD: That I do not know.

Mr. WARRINGTON: You cannot tell?

Mr. GUILFORD: No, sir.

Mr. WARRINGTON: Well, competition in the production and sale of an article is a commercial condition, is it not?

Mr. GUILFORD: Yes, sir; that is a commercial condition.

2043 Mr. WARRINGTON: Well, if article X is not subject to competition and article Y is, you would have to recognize a difference in the classification of those two articles, would you not?

Mr. GUILFORD: I do not see that that would be any factor at all, whether there was competition of different factories or whether one made it all.

Mr. WARRINGTON: Let us see. The article that meets with no competition—assuming it to be one of the necessaries of life—it would move and go throughout the length and breadth of the country, when the article that is the subject of competition at every place it would reach would not. Is not that so?

Mr. GUILFORD: When you speak of competition you mean to take a manufactured article that is manufactured at every place over a widespread area and another article made at one place and controlled by one source?

Mr. WARRINGTON: Yes, sir; assume them both to be prime necessities of life.

Mr. GUILFORD: Take for example soap. It is made in almost every city in the country, and sugar is only made in about a half a dozen places. You ask whether that fact should influence the classification?

2044 Mr. WARRINGTON: Well, you may take that as a- illustration.

Mr. GUILFORD: I think it should have an influence, at least a negative influence. That is, we should not get soap so high that it would prevent the shipment of it and would leave the supplying of the consumption to each local factory, each factory supplying a narrow radius around it.

Mr. WARRINGTON: Why should you not?

Mr. GUILFORD: From a selfish point of view. The railroads would not get the traffic. We want to carry soap all over the country in both directions and we must not get the rate on soap so high as to stop the shipment. It would deprive the railroads of the traffic.

Mr. WARRINGTON: Is there any other reason?

Mr. GUILFORD: I do not think of any other.

Mr. WARRINGTON: Well, when you are talking about what should move an article you are talking about just those things which concern the railroad company and you want to get your rate so the traffic will move throughout the length and breadth of the country, do you not?

Mr. GUILFORD: That is what we want; but do not understand me to say that we do not consider anything else. We do. You

2045 asked in the particular case of soap why I would not make a higher rate on it and I answered your question that from a selfish point of view we would not make a higher rate.

Mr. WARRINGTON: Now, do you think that two articles such as you have spoken of should be treated alike where the control of supply is in one seat of power practically in one article and in the other article it is distributed all over the country.

Mr. GUILFORD: I do not see that that makes any difference affecting the classification.

Mr. WARRINGTON: You do not?

Mr. GUILFORD: No.

Mr. WARRINGTON: Well, where the competition is fierce it is more difficult for the producers to transfer your excess of charge to the consumer than it is where the competition is less or not at all. Is not that so?

Mr. GUILFORD: Well, it may be.

Mr. WARRINGTON: Is it not obviously so.

Mr. GUILFORD: As far as sugar is concerned, there is plenty of competition in that. There is competition in Boston, competition in Philadelphia and competition in New York.

Mr. WARRINGTON: Do you not know as a matter of public
2046 history that the refineries of Philadelphia were three out of the four last which were in the east and not in the control of the American Sugar Refining Company and that that came out in the E. C. Knight case, reported in 156 U. S.

Mr. GUILFORD: No, I do not. I have not read 156th U. S. lately, but I have information which is perfectly satisfactory to me that there — independent refineries in New York fighting the sugar trust. McCann in Philadelphia is another one, and there is another in Boston.

Mr. WARRINGTON: Now, do you take into consideration that the great bulk of the refineries are on the eastern seaboard and that the sugar all has to move from that seaboard to the west or nearly all of it?

Mr. GUILFORD: As I understand it, the seaboard supplies a certain territory. They do not go to the Missouri River. New Orleans supplies a certain territory, part of the Missouri River and Southwest territory; and San Francisco supplies the Pacific coast.

Mr. WARRINGTON: Do you know what proportion of the sugar consumed in this country is shipped from the eastern seaboard?

Mr. GUILFORD: No, I do not.

Mr. WARRINGTON: Is it not essential that a man know that
2047 when he is talking about the classification of freight articles?

Mr. GUILFORD: Well, I think he could get along without that knowledge. We make a classification for the eastern seaboard, east of the Mississippi River and north of the Ohio. We do not make one for the rest of the territory. We know what we have. We know what traffic we have in our territory and we try to make the classification conform to that.

Mr. WARRINGTON: There is only one other thing I want to ask you a question or two about. You spoke of the terminal charges being greater than the cost of pulling the article to the termini. Do you know what terminal charges are allowed by your companies to the American Sugar Refining Company here?

Mr. COLSTON: Do you want to go into that, your honors?

The CHAIRMAN: It seems to have very little relation.

Mr. COLSTON: I do not see what it has to do with classification.

Mr. WARRINGTON: Your honor, sugar is one of the articles carried up in this case. They have contended that our terminal is one of the things which should affect classification. You cannot
2048 know all about the sugar, no matter how analogous it is, without knowing the terminal charge that is allowed in here. It is one of the things that is essential to the elucidation of what we call analogous articles.

Mr. MAXWELL: That involves an inquiry with respect to the particular terminal facilities here. This classification was not made for Procter & Gamble; it was not made with reference to the terminal charges at Ivorydale. It was made for an entire section of the country.

The CHAIRMAN: I understood Mr. Guilford to speak generally of the terminal expenses of carriers——

Mr. GUILFORD: On less than carload business.

The CHAIRMAN: As compared with the revenue received from short hauls. He was not speaking about the particular terminal expense on any one article, but it was generally speaking.

Mr. GUILFORD: On less than carload business, your honor.

The CHAIRMAN: It makes it very expensive with reference to traffic carried only short distances. So it occurs to me, Mr. Warrington, that nothing was said by Mr. Guilford on that subject which laid a foundation for a minute cross examination as to this matter. I do not want to abridge the cross examination but we are get-
2049 ting into a great many abstract questions and questions of political economy, which would be endless. If there is anything peculiar or significant as between sugar and soap in respect to terminal charges, why that may appear.

Mr. WARRINGTON: Well, you will remember that their going into the question of terminal charges made by the I. & M. V. Railroad was claimed to be pertinent to the issue as to this classification. Now, our contention at that time was precisely what the contention on the other side is to-day that it was a question of classification for a great traffic, for all of the soap makers of all the competitive soaps, and it was not a question of the Procter & Gamble Company alone, and that therefore the matter of terminal charges was irrelevant. The court held, however, that it was relevant in this case. Now, we are met pursuant to a suggestion from the bench that more testimony should be taken with reference to analogous articles. It was supposed by the Commission that there was something that would create room for the use of the word "analogous" and some reason for having testimony upon it. Now, sugar has been going with soap in the old classification and in the new. If soap is affected by a local terminal of a particular company, when we are investigating into the classification for the whole territory, then why would not
2050 the local terminal on any of these analogous articles be quite as relevant and why would it not be equally necessary to the end that you might place the analogy to its logical end.

Now, the question of local terminals is either good or bad. It is either relevant or irrelevant to the whole case. If it is relevant to our injury or our help at Ivorydale, it is relevant to the injury or help or sugar in New York. And they cannot for the purpose of showing what our terminals are introduce it in connection with a particular manufacturer of soap and then turn around and exclude it with reference to one of the articles that is classed right along with soap. We are trying to show why soap should not be carried up with sugar. We are trying to show that there is a differentiation, and whether this witness assents or dissents, it is perfectly plain what the analogies are and what the want of analogy is, and it is perfectly plain what things would affect it. Now, then, among the influences that would affect it is the question of local terminals, just as they have sought to make local terminals affect us at Cincinnati.

The CHAIRMAN: That is, you suggest that there may be reasons why sugar was properly advanced from sixth to fifth class
2051 that do not apply to soap?

Mr. WARRINGTON: Yes, sir.

Mr. MAXWELL: This classification was made not with reference to the Procter & Gamble Company, not with reference to any particular shipper. It applies equally to the Procter & Gamble Company who enjoy special privileges and considerations at Ivorydale. The Werke Company and the Globe Company at Cincinnati do not enjoy them. The testimony introduced with reference to the Ivorydale terminal was not introduced with the idea of affecting the correctness of the classification of soap, but it was deemed by us material solely in the aspect of its being an application by the Procter & Gamble Company to have the rates by the railroad companies reduced, upon the ground that they were unreasonable; and also to meet their claim for reparation, and when we came to that particular case of this particular shipper we deemed it material to inquire whether or not upon all the considerations applying to that particular shipment he could ask us to restore to him eight or ten or fifteen thousand dollars, as having been illegally exacted. That terminal had nothing to do with the question of classification, which is the question upon which we are taking testimony now.

2052 Mr. WARRINGTON: Pardon me a moment. I cannot follow my friend. It seems to me he is confusing this—I do not mean to say purposely—but his argument is in confusion or mine is. It can make no sort of difference on the question of classification alone whether we get a reasonable or unreasonable terminal, and our right to recover or for reparation is going to depend upon whether this classification is reasonable or unreasonable, unduly prejudicial or otherwise; and to say that they can limit the application or that they purpose to limit the application of the local terminals to the mere question of reparation is to ignore the whole course of argument which was indulged in when they sought to introduce that. They are saying that the Procter & Gamble Company cannot complain of this classification when they get this thing. They are not saying merely that the Procter & Gamble Company cannot have

reparation. That question of reparation must depend upon whether the classification violate- the interstate commerce act or not; not whether we are violating some other law or getting an unreasonable local terminal. It is therefore vitally connected with the question of classification, the way they have sought to use it. That affects our whole output and our relation to this classification and
2053 the rates upon it. Now, can it be that when we are inquiring into analogous articles, gaining information upon those articles, that we are to ignore what the railroad companies do with respect to one that has been associated with soap from start to finish like sugar. Suppose it were to turn out that they are paying terminal charges to the American Sugar Refining Company right in this city that are out of all proportion to what they are paying to us at Ivorydale, can it be that that would not have any effect upon the question of the reasonableness of this classification or its unreasonableness? These gentlemen do not propose to limit their claims respecting those local terminals to the question of reparation.

Mr. MAXWELL: We have not said that we do, but we propose to inquire whether the Procter & Gamble Company can come into a court of equity and get an injunction upon the sole ground of its being unreasonable in the face of the reception of $45,000 last year of rebates.

Mr. WARRINGTON: Now let us see. This is a representative case and you cannot escape that and the question of whether this classification shall stand or fall cannot be denied to the Procter & Gamble Company simply because the Procter & Gamble Company has a contract which it has enjoyed for years and which these people
2054 can break in ten days' time. You would not say to us that the classification was reasonable as to us and that we should not have relief simply because that was made out there for them to break at their leisure. Counsel can never make progress that way. Nor can we escape in this case as to what they are doing elsewhere by such a claim. This classification comes about as a national subject, affecting every soap maker in the United States and that question cannot be sealed or avoided or evaded by counsel by any such process.

Mr. COLSTON: Now, the false position which Mr. Warrington takes, to my mind, is this: that is, that the terminal charge, these rebates—that is what I call them—allowed to the Procter & Gamble Company cuts no figure in the classification nor does any rebate that may be given anywhere else—to the American Sugar Refining Company, if there be such. It is not pretended that those things entered into the consideration of the classification committee. It cannot be pretended that they put sugar in the sixth class because Procter & Gamble had a rebate. Therefore, I think it is an attempt on the other side to justify the reception of this rebate by Procter & Gamble to show that some other fellow is doing the same thing elsewhere.

There is more than the national aspect in this question. The
2055 suitor must come into a court of equity with clean hands. He comes forward now and presents himself as the party especally aggrieved. Suppose we could show that the Procter &

Gamble Company were not paying any freight rates at all on their soap. Would you listen to them at all? Of course you would not. That is where the question has its important influence in this case.

Mr. WARRINGTON: Your honors, Mr. Colston omits this, that every suitor, every actor in a lawsuit, no matter whether on the law side or the equity side of a court has the right to adduce that testimony which under any phase could be relevant to the issues. Now, we have presented to you an issue that this classification violates the Interstate Commerce act. Can they at this stage of the case foreclose our pursuit of an inquiry in that behalf by having you in effect rule now that we will not be allowed to raise that question because we have not clean hands. Suppose you should find in the end that our hands were clean and that they had not removed the dirt from theirs, then you would be minus the testimony.

The CHAIRMAN: The trouble about it, it seems to me, is that it leads us into an investigation of the legality of the classifica-
2056 tion of sugar, whereas the question up in this case is the question of the legality of the classification of soap.

Mr. WARRINGTON: Well, only to the extent that we were looking into analogous articles.

The CHAIRMAN: We are not disposed to shut out any line of inquiry that may aid the Commission in reaching a just conclusion. This comes up in this way: it appears that in the same classification sugar as well as soap is advanced from sixth to fifth class. Now, you inquire whether some allowance is made to the sugar manufacturers on the Atlantic coast which enters in possibly into the classification of sugar. What is the point of your question? I want to appreciate that.

Mr. WARRINGTON: We are attempting to show——

The CHAIRMAN: What is the question you asked?

Mr. WARRINGTON: What terminal charges are allowed the sugar business here to the end that we may know just what sugar is and how it stands in the classes, 20 per cent. below the third class and the fifth class, along with soap. We cannot make the comparison unless we know that fact, because it affects the question of how sugar stands. Sugar does not stand there just as it appears on the classication book.

Mr. MAXWELL: It is not suggested that sugar was trans-
2057 ferred from sixth to fifth class on account of any special terminal, that there was any change in any charge for terminal srvices.

The CHAIRMAN: Nor of soap.

Mr. MAXWELL: Nor of soap.

The CHAIRMAN: It occurs to me that we could get all that was material or useful on the subject by having the question answered quicker than we could by discussing it. It seems very remote, Mr. Warrington, but I am disposed to allow you to ask the question if you will put the question in a form so that we will understand exactly what you seek.

Mr. WARRINGTON: Very well. What sums per hundred pounds, per ton, per barrel or per package of any kind are allowed the

American Sugar Refining Company or any one in its behalf by the railroads with respect to the terminal facilities which that company assists in giving in connection with the shipment of sugar?

Mr. GUILFORD: None whatever.

Mr. WARRINGTON: Do you mean to say that you do not allow Mr. Palmer of Brooklyn, who controls the terminal facilities of the sugar refining interests for lightering or anything of that kind?

Mr. GUILFORD: I have not said anything about Mr. Pal-
2058 mer. Your question referred to the American Sugar Refining Company or somebody in their behalf. I say we make no allowances.

Mr. WARRINGTON: What about Mr. Palmer.

Mr. GUILFORD: He is our agent; switches the freight, lighters and loads it. He gets an allowance and not a penny of it goes to the American Sugar Refining Company. He maintains a railroad shipping *war* for several of the railroads. He has a large amount of money invested in grain elevators, tracks, engines &c. and he has the trunk line agency of four or five of the trunk railroads. As such, he receives this sugar, loads it into cars and lighters it around and delivers it to the termini of the railroads, for which he receives a compensation.

Mr. WARRINGTON: You mean to say that Mr. Palmer has no connection with the American Sugar Refining Company?

Mr. GUILFORD: He has business connections. He acts for them in the matter of routing sugar.

Mr. WARRINGTON: Has he not been connected with it ever since its organization?

Mr. GUILFORD: Mr. Palmer may be interested in the American Sugar Refining Company. I have no means of knowing. But the dealings we have are with Mr. Palmer as the proprietor of
2059 Palmer's dock. Mr. Palmer maintains a railroad terminus. The railroad companies, instead of each of them buying or leasing the ground and erecting expensive improvements and piers &c. which would be necessary, use Mr. Palmer's and if they get any business there they pay proportionately, and if they do not they have nothing to pay. It is simply the most economical way of maintaining a station at Brooklyn.

Mr. WARRINGTON: What allowance do you make to him?

Mr. MAXWELL: We object, your honors.

The CHAIRMAN: Is there any objection to disclosing that fact. Is it a matter that appears on your tariffs and is generally known to the public?

Mr. GUILFORD: I do not know how many know it. It does not appear in our tariffs.

The CHAIRMAN: Well, it is claimed here, or will be, that your relations with that dock with the circumstances you now explain have some resemblance to the relations of these carriers to the Procter & Gamble Company and its railroad, and you have been allowed to inquire into what compensation was paid into that railroad, what money it is making, including the rebate it has had. While I do not think we ought to go into details about it, I do not think it is of

great importance. I think he may answer the question un-
2060 less there is some reason that does not appear. We are always disinclined to compel the disclosure of matters that are not known to the public and which the carriers do not desire to have known. I assume that there is nothing of that kind about this, Mr. Guilford. It is obtained by a lot of railroads and the compensation must be a matter well known to the shipping public.

Mr. GUILFORD: Eighty-four cents a ton upon Chicago business, through western business and sixty cents a ton upon other.

Mr. WARRINGTON: Do you know anything about the quantity of rice that is used for making beer?

Mr. GUILFORD: No, I have not any figures about it. I simply know from observation that at times there are large and heavy shipments of imported rice.

Mr. WARRINGTON: But you do not know, as I understand you, what proportion of the imports of rice or of the production of rice in this cuntry is used for beer?

Mr. GUILFORD: I understand that all the import rice is, substantially.

Mr. WARRINGTON: Does that bear any relation to the rice produced in this country.

Mr. GUILFORD: Well, I suppose it is a different quality of rice.

2061 Mr. WARRINGTON: Do you make any distinction in this classification between rice produced in this country and rice imported?

Mr. GUILFORD: No distinction at all. It is all charged the same.

Mr. WARRINGTON: Do you know whether the imported rice enters this country at the eastern seaboard?

Mr. GUILFORD: It does at times.

Mr. WARRINGTON: Does it not all.

Mr. GUILFORD: No, I do not know that it does all. Other ports are open and I suppose it would go to any of them.

Mr. WARRINGTON: Do you know anything on that subject.

Mr. GUILFORD: I do not know where it goes, no.

Mr. WARRINGTON: Do you know the value of the rice that is imported and used for beer?

Mr. GUILFORD: No, sir.

Mr. WARRINGTON: Do you know how its supply is controlled?

Mr. GUILFORD: No, I do not.

Mr. WARRINGTON: Can you give the percentage of quantity of imported rice to that that is produced or grown in this
2062 country?

Mr. GUILFORD: I can not.

Mr. WARRINGTON: Do you know the reason why imported rice is used for beer purposes in preference to rice produced in this country?

Mr. GUILFORD: I do not.

Mr. WARRINGTON: In view of these things that you do not know you think that rice compares favorably with soap?

Mr. GUILFORD: I attempted to explain why I suppose rice was put in this lowest class. My conjecture was that it was on account

of it being so largely imported rice that might go to its destination by other ports in competition with ours. I merely offered that as my conjecture. I have no knowledge on the subject. Members of the committee can no doubt explain what controlled their judgment in placing it there. I do not happen to know.

Mr. WARRINGTON: I think that is all.

The CHAIRMAN: Mr. Guilford, it is rather remote, but you, as well as other witnesses have spoken with such emphasis of the superior desirability of soap, it occurred to me to ask you why soap is more desirable than dry goods.

Mr. GUILFORD: Well, dry goods are light and heavy. Dry goods include within their scope valuable silks as well as coarse and
2063 common goods. It is also a class of business that will hardly bear a higher rate.

The CHAIRMAN: I know; but you spoke of its desirability for freight. Considering the higher rate you get on dry goods, would not a car of dry goods earn more than a car of soap?

Mr. GUILFORD: Well, I have seen a carload of dry goods that would yield a great deal more than a car of soap.

The CHAIRMAN: Presumably, since the element of risk is very slight—since experience shows such small losses. I wondered why you all appeared to emphasize soap as specially desirable.

Mr. GUILFORD: Only as to those lower classes. Of course, an article like dry goods when it has a reasonably good weight and we would get nearly three times as high a rate, it gives a better return. But, comparing soap with fifth class articles, I should say it was one of the most desirable.

The CHAIRMAN: Of course we understand, as you say, you cannot classify articles with reference to their desirability or the cost to the carrier of transporting them, as is well illustrated in the article of hay, you described. So we must take into account
2064 commercial conditions as frequently determining whether an article shall be in one class or another. Getting down to this case, it appears that you have advanced soap from the sixth to the fifth class and left starch in the sixth class. Now, having reference to their physical characteristics and the ease with which they are handled and carried, one that does not know would suppose that starch and soap were very similar in point of desirability to the carrier. Therefore, since you have changed the classification of one and not the other, apparently we look to some commercial reason to determine why it is so.

Mr. GUILFORD: We have changed them both your honor. They are both in the fifth class.

The CHAIRMAN: Oh, you have. I was going to say, what are the particular conditions.

Mr. GUILFORD: They are both in the same class, but a commodity rate prevails westbound on starch.

The CHAIRMAN: But does not on soap?

Mr. GUILFORD: No, sir; does not on soap. And it does not on starch except westbound.

The CHAIRMAN: What are some other articles which have been mentioned that still remain in the sixth class?

Mr. GUILFORD: Rice is one. If you look at the sixth class articles you will find bricks, stone and those sorts of things
2065 there. That is characteristic of the class. But there are some things there that ought to be in a higher class, but for some commercial reason, no doubt, they are put in the lower class.

Mr. WARRINGTON: I think he is mistaken about one thing the chairman asked about. Is there not a commodity rate on starch east as well as west?

Mr. GUILFORD: Possibly there may be. I qualified my remark by saying that I believed it was only westbound.

Mr. WARRINGTON: There is a commodity rate on grain east, is there not?

Mr. GUILFORD: Yes sir.

Mr. WARRINGTON: When you leave starch nominally in the sixth class, you do not practically keep it there, but you put it lower than the sixth.

Mr. GUILFORD: The fifth, you mean?

Mr. WARRINGTON: No—oh yes, you are right. While you nominally keep it in the fifth class, you give it a commodity rate which is lower than the sixth class. Is not that true?

Mr. GUILFORD: I do not know what the commodity rate is. I cannot answer as a matter of evidence.

Mr. WARRINGTON: If there is a commodity rate both east
2066 and west on starch will you explain why that should be. Let me ask you another thing in that connection, why you should make a difference between the movement of starch and soap, say between Cincinnati and Pittsburg? What is there from a commercial condition that would bring that about—those interior cities.

Mr. GUILFORD: I am really only qualified to speak in a general way about these classification matters. As I have said before, I am not a member of the committee and in close touch with it and can only speak from such information as would come to a traffic manager in some years of experience, but I am not familiar with all details. I would have to speak from conjecture and not from knowledge as to what influenced these changes.

Mr. WARRINGTON: That is the reason I left you on those questions. You did not have the knowledge. You conjectured reasons.

Mr. GUILFORD: That is correct.

Mr. MAXWELL: With reference to this suggestion that has been made about the desirability of some particular article of traffic, do you mean to have it understood that *that* is anything particularly desirable about soap as an article of transportation in its
2067 physical qualities as compared with anything else? If so, what is the matter of desirabiltiy? Can it be loaded and unloaded and carried cheaper? What is the matter of desirability.

Mr. WARRINGTON: Your honors, I object. I do not think my friend ought to cross examine now.

Mr. MAXWELL: I want to find out what this talk about desirability is for the information of the Commission. You can probe the matter as much as you want. It is for my information too.

Mr. WARRINGTON: You know the point of my objection. There

is a difference between your right to examine a witness you call and your right to examine a witness I call. When your witness makes a statement, as he has, very frankly and fully done, I deny your right to cross examine him.

The CHAIRMAN: That is rather technical, Mr. Warrington. If you want anything further from the witness as to the reasons why he describes soap as desirable, let him state it.

Mr. MAXWELL: I want it as compared with other things.

The CHAIRMAN: Well, I was a little befogged myself why so much emphasis was placed on soap. Of course, it moves in large quantities and in packages that can be easily handled, loaded and unloaded.

2068 Mr. GUILFORD: I think the chairman has pretty well answered the question. It is put up in packages of convenient size; they pack well and load heavily in a car, and a car of soap at the fifth class rate, I think, would yield a railroad company more revenue than a carload of other articles of the same class. There are some that might yield more than soap but taking it as a general thing, I think soap is more desirable than some other articles in the same class.

Mr. MAXWELL: Now, what articles?

Mr. GUILFORD: Take hay, if you please. Hay will load 20,000 pounds to a car. That is about all you can get in. Very often you cannot get in that much. But we charge for 20,000 whether it is in there or not. That is a minimum. I should say there would be no difficulty in loading a carload of soap to far in excess of 20,000 pounds. Then that carload would yield more money than a carload of hay.

Mr. MAXWELL: You have already told us about hay.

Mr. COLSTON: And you carry a hundred carloads of hay to one of soap.

Mr. MAXWELL: Take canned goods. Is soap more or less desirable. If so, why?

2069 Mr. GUILFORD: I do not think there could be a closer analogy between two articles than between those two in that feature. They are very similar in those respects.

Mr. MAXWELL: Well, take iron in plates and slabs.

Mr. GUILFORD: Soap has no advantage over that. I do not say that it is the most desirable freight, but I say that I would regard it from the convenient size of the packages in handling and their heaviness, I would regard it as more desirable than a good many *other* others of the same class.

Mr. MAXWELL: What are the things that are just as desirable or more desirable, in whatever sense you use this word "desirable."

Mr. GUILFORD: The sense that it will load heavily and not cost much for handling it.

Mr. *Guilford:* Take sheet iron.

Mr. GUILFORD: If you take iron, I think the expense of handling iron might be greater than the expense of handling soap or canned goods.

Mr. MAXWELL: What would you say as to the comparative desirability?

Mr. GUILFORD: I should say that soap was more desirable?

Mr. MAXWELL: How about car wheels?

2070 Mr. GUILFORD: Car wheels are very heavy. Are they fifth class?

Mr. MAXWELL: I so understand. Are they more desirable or less desirable?

Mr. GUILFORD: I think more desirable. They yield more money per car.

Mr. MAXWELL: What do you say as to axes?

Mr. GUILFORD: I do not know whether a carload of axes is ever shipped.

Mr. MAXWELL: Suppose somebody did get a carload of axes. What would you say as to the comparative desirability?

Mr. GUILFORD: I should say it would break down a car loading it with axes.

Mr. MAXWELL: Take hardware.

Mr. GUILFORD: That is all kinds.

Mr. MAXWELL: Soap is all kinds. Take it as a class, what would you say as to the comparative desirability of soap and hardware?

Mr. GUILFORD: A third class rate would probably make hardware more desirable on the average. I have no doubt it would.

The CHAIRMAN: Does it come to this, Mr. Guilford: you have spoken of it as highly desirable as compared with other

2071 articles in the same class?

Mr. GUILFORD: Yes, sir.

The CHAIRMAN: You do not mean to say that with reference to all classes of traffic soap is more desirable?

Mr. GUILFORD: No, sir. I did not wish to deny what is a fact, that soap is good freight at fifth class.

The CHAIRMAN: And very desirable as compared with other articles that take the fifth class rate?

Mr. GUILFORD: Well, it is among the best of them.

Mr. MAXWELL: I want to know about Palmer's dock. Are these rates that you say are paid by the railroads to Palmer's dock applicable to sugar alone?

Mr. GUILFORD: They are applicable to everything shipped to and from Palmer's dock.

The CHAIRMAN: It seems to me that Mr. Guilford made that very clear, that instead of the railroads maintaining their stations there, this gentleman does it for them.

Mr. COLSTON: He is a general wharfinger for them.

Mr. GUILFORD: Yes, sir.

Mr. MAXWELL. Everything that goes there pays?

Mr. GUILFORD: Yes, sir.

2072 Mr. MAXWELL: There is no discrimination in favor of sugar or against soap.

Mr. GUILFORD: There is only — discrimination and that is that grain does not pay as much as other freight.

Mr. MAXWELL: That is all.

There being no further questions, the witness was excused.

2073 G. J. GRAMMER, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: What is your business, Mr. Grammer?

Mr. GRAMMER: General traffic manager of the Lake Shore Railroad.

Mr. MAXWELL: How long have you held that position?

Mr. GRAMMER: Since October 1, 1894.

Mr. MAXWELL: What was your experience or connection with the railroad prior to that time?

Mr. GRAMMER: Well, I was the assistant general manager of the Chesapeake & Ohio and Southwestern Road before going to Cleveland; prior to that I was president of the Evansville and Terre Haute and general manager of the system of roads in and out of Evansville, including the Chicago & Eastern Illinois, the Peoria, Decatur & Evansville, the Louisville, Evansville & St. Louis, the Evansville & Indianapolis, and the Evansville & Terre Haute railroads.

Mr. MAXWELL: For how many years back does your railroad experience extend?

Mr. GRAMMER: Since 1881.

Mr. MAXWELL: What, if anything, did you have to do with the adoption of the recommendations of the Official Classi-
2074 fication Committee which were embodied in official Classification No. 20.

Mr. GRAMMER: I approved it by my vote.

Mr. MAXWELL: Were you a member of the Classification Committee.

Mr. GRAMMER: No, sir.

Mr. MAXWELL: What consideration did you give to the subject in determining that your road would adopt that revision of the classification.

Mr. GRAMMER: We have in operation on the Lake Shore Railroad what we call a tariff bureau in charge of a special officer, and when any questions of classification or tariff or divisions are presented, it is the duty of that officer to make an abstract of the proposed changes whatever they may be and submit them to me and I approve or disapprove them. In this classification, it went through the same course as previous changes in classification and after looking over it, we approved it.

Mr. MAXWELL: Was your attention directed especially to the subject of soap?

Mr. GRAMMER: No, sir.

Mr. MAXWELL: What were the reasons that influenced you in adopting the change that was suggested with reference to soap?

2075 Mr. GRAMMER: Just the same reasons that influenced us to make the many changes made in the classification; that is, to increase the revenue of the road.

Mr. MAXWELL: We would like to have — tell the Commission upon what grounds you think soap ought to be in fifth class.

Mr. GRAMMER: The general theory, as I understand it, of making up classifications is that the Classification Committee which con-

sists of six of what we call western roads—west of Buffalo and Pittsburg and six between Buffalo and New York and two from the trunk lines—these gentlemen constitute what we call the Classification Committee. The Lake Shore has a direct representative, one of our freight agents being one of the six western men. This classification committee meets periodically, hear the propositions presented and the arguments pro and con and after digesting the matter and considering the question both from a revenue standpoint and its relation to the public, they form their conclusions. These men have been in the service a long time and we regard their judgment as certainly equal to ours. I have recommended a great ma-y times changes of classification that were not made and I have made some that were made, but I have never dissented par-

2076 ticularly from the action of the classification committee. In the matter of soap, I am one individually who does not believe that soap ever ought to have been classed less than fifth class. I opposed changing the tariffs and classification after the ruling of the Commission. I did that for the reason that as far as my own opinion was concerned at the time I believed that the ruling of the Commission was on common soap in carloads, and the presentation of that case to the Commission was based, as I felt then, upon an improper representation, and the defense of the case was an improper defense; and the Commission's order, as we understood, ordered the railroads to cease charging the Procter & Gamble Company—not any others—the fifth class rate on soap, based practically on the gross weight. After that ruling was made it was decided by a good many of us that we would not change. Finally we learned of the action at Cincinnati and we followed because we could see no reason why soap should be carried from Cincinnati any cheaper than from any other point. So the ruling of the Commission when it became effective at Cincinnati we adopted it and made it the rule throughout our territory.

Mr. MAXWELL: Now, what are the reasons in your mind for thinking that soap ought to be in the fifth class and not in the sixth?

2077 Mr. GRAMMER: One of the reasons is that I regard soap as an analogus article to many articles in the packing house list, like grease and tallow oil and cheap things of that character; certainly eighty per cent. of the soap is made out of that material, and as long as we charge fifth class on that material I see no reason for charging less on the product of that material.

Mr. MAXWELL: What, if any other reasons, have you for the view that soap ought to be in the fifth and not in the sixth class?

Mr. GRAMMER: This classification is a classification that applies to the interchange of traffic throughout the New England and Middle and what we call the Central States and it is an article that we feel it can bear the transportation; and any article that can bear the transportation without creating special hardship on any interest, we think it ought to bear it within reason and within fairness, and soap strikes me as one of those articles.

Mr. MAXWELL: Well, have you made any investigation based on the rates that are received in other territory?

Mr. GRAMMER: Yes, sir.

Mr. MAXWELL: I wish you would give the Commission the benefit of your investigation on that subject as far as it influences
078 your views in maintaining that soap ought to be in the fifth and not in the sixth class?

Mr. GRAMMER: When the question came up last fall in regard to hanging the classif-cation of a good many of the articles, I personally examined a good many classifications: the Southern Classification, the Western Classification, the Illinois *Cals*sification, which is a lawful classification one that is made under the law of the State by the commissioners who have that power. I found that the rates on class freight as well as carload freight in Central Freight Association territory were very much less than in other territory, whether those rates were made by law or otherwise. After I found that condition of affairs, I could see no reason why the railroads in the Central Freight Association territory should not get approximately as much for their services as other railroads received for comparative services. And, speaking directly to this question of soap, I found that the official classification as adopted in Classification No. 20 made soap in carloads fifth class while the Western Classification made it fifth class the Southern Classification sixth class and the Illinois Classification sixth class. Now, when we came to compare the rates on this article for the distances, I found that in the official classification the charge for carloads for ten miles is 4½ cents; in the Western Classi-
079 fication, fifth class, for ten miles, 10 cents per hundred pounds; in the Southern Classification for ten miles, 6 cents per hundred pounds, and they classified it sixth class; in the Illinois Classification, which is here, and which is the lawful classification of the State for ten miles it was 5.64 cents. You will find the same ratio of difference for fifty miles: Official Classification 7½ cents a hundred; Western Classification 33 cents a hundred; Southern Classification 22 cents a hundred; Illinois Classification 9.64 cents a hundred. I made a memorandum here which is a copy of the Illinois State tariff in cents per hundred pounds on the different classes, the New York State scale for the same; the Evansville & Terre Haute Railroad, which is practically a copy of the Illinois Classification; the Southern Classification, I have a copy of their rates taken from the Louisville & Nashville tariff; and the Western Classification, a copy of their rates; and the official classification, a copy of their rates. They are all here showing rates per hundred pounds and distances.

Mr. MAXWELL: How does the rate for soap put at fifth class compare with the rates on soap in Southern, in Western or in any classification where legislative or commissions' action has determined the rate?

2080 Mr. GRAMMER: The rates in the other territory outside of the official classification vary from 40 per cent. greater to 400 per cent. greater than the rates for the same service in the official classification territory. I will state that again. Soap classified at fifth class in the Official Classification territory for fifty miles the rate

is 7½ cents; in Western territory it is classed five, 33 cents a hundred; soap in the Southern Classification is the same in carloads and less than carloads and the rate is 22½ cents per hundred pounds and in the Illinois Classification it is 9.94 cents for fifty miles in carloads and 11.28 cents for less than carloads.

The CHAIRMAN: Does that all mean this, Mr. Grammer, that outside of official territory the rates on soap are in all cases greater, the actual rates, and in many cases much greater than are the fifth class rates in official territory?

Mr. GRAMMER: Yes, sir; and putting it another way, if a shipper, —if Procter & Gamble were shipping to Lexington, Kentucky, they would pay on the basis of three times as much as if they were shipping to Columbus, Ohio, practically the same distance, in cents per hundred pounds in carloads.

Mr. MAXWELL: I would like to have you make your comparisons especially with reference to tariffs prescribed by public au-
2081 thority in the State of Illinois.

Mr. GRAMMER: In regard to the rates from Cincinnati to Lexington proper, it might be that to Lexington proper the basis is not just as high, say, because they use in that territory wherever they can use it, water competition; ignore the long and short haul clause; but take the Columbus, Ohio, distance to a local point or a junction point not affected by water competition in the South, and the conditions exist that I referred to.

Mr. COLSTON: That is, the carriage of soap for equal distances south is three times greater than for equal distances north, other things being equal.

Mr. GRAMMER: Yes, sir.

The CHAIRMAN: That means that the sixth class rate south is higher than the sixth class rate north?

Mr. GRAMMER: Yes, sir. Now, in regard to your question, Mr. Maxwell, I have in my hand a copy of the Railroad and Warehouse Commissioners' revised schedule of reasonable maximum rates of charges for the transportation of passengers and freight on the railroads in the State of Illinois, prepared by the Railroad and Warehouse Commissioners of Illinois, taking effect January 1, 1900. That is the date of this Official Classification No. 20. In order to
2082 make the comparison in cents per hundred pounds so that it will be as brief as possible on all property, the rate under the official classification for thirty miles reads as follows: First class 7½ cents; second class 7½ cents; third class 7½ cents; fourth class 7 cents; fifth class 6 cents; sixth class 5 cents.

Mr. MATTHEWS: What are these figures?

Mr. GRAMMER: They are the scale that is in effect in the State of Ohio by the Lake Shore and Pennsylvania railroads under the Official Classification.

Mr. MATTHEWS: For how many miles?

Mr. GRAMMER: Thirty miles. And the Big Four. Now for the same distance in Illinois under the Railroad and Warehouse Commissioners' tariff; First class 22.56 cents per hundred pounds; second class 19.74 cents; third class 15.98 cents; fourth class 11.98; fifth

class 9.58; class A 7.99; Class B 7.52; Class C 6.02; Class D 4.70; Class E 4.23; wheat 5.67; grain 5.10. Now, take the distance of a hundred miles——

Mr. MAXWELL: Mr. Grammer, I do not know what relation this general statement you are making about all the different classes has. What I wanted to compare were the rates on soap under the Official Classification with the rates on soap as prescribed by public
2083 law in Illinois.

Com'r YEOMANS: He has given that.

Mr. GRAMMER: I was giving the comparative rates because you asked me what influenced my action in favoring this advanced rate which the change of classification meant and I said what practically influenced me in that matter; when I came to look up comparative rates in other territory that influenced me on this subject. As to soap I have said that in the official classification the rate on soap for fifty miles was 7½ cents while in the Illinois Classification it was 9.64; so that a soap manufacturer in Peoria, distributing his soap in Illinois, an equal distance, the consumer of that soap was paying 40 per cent. more for his shipments of soap for comparative distances than he would have to pay in the State of Ohio.

Mr. MAXWELL: Is there anything in the conditions that would justify a higher rate to one place than the other?

Mr. GRAMMER: I do not know of any. I ran that out a little to see whether there was any justification of these higher rates in other territory. I know it is put at us pretty often——

Mr. MAXWELL: Take Illinois and Ohio.

2084 Mr. GRAMMER: Illinois has more miles of railroad and more people than the State of Ohio so it seemed to me that Illinois was a fair comparison to make.

Mr. MAXWELL: Now, we would like to have the benefit of your investigations to see whether a rate that is reasonable in the South and West would be unreasonable in a different classification territory. If so, why? If not, why?

Mr. GRAMMER: In looking over Poor's Manual I found this condition——

Mr. WARRINGTON: What year?

Mr. GRAMMER: Poor's Manual for 1899—that the liability for a mile of railroad in the New England States was——

Mr. WARRINGTON: Tell us what you are going into from Poor's Manual.

Mr. GRAMMER: I find in Poor's Manual that there is very little difference between the actual liabilities of the railroads in the State of Ohio and in the Southern States, the liabilities per mile.

The CHAIRMAN: What do you mean by "liabilities"?

Mr. GRAMMER: Bonded debt, stock, &c.

The CHAIRMAN: The capitalization?

Mr. GRAMMER: Yes, sir. So, necessarily, they would have to earn practically the same money.

2085 Mr. WARRINGTON: Now, I do not know how far the Commission care to go. What has this to do with analogous articles.

The CHAIRMAN: Well, he is asked to give reasons which influence him in having his road adopt this classification.

Mr. WARRINGTON: I know, but is that germane now to the question that is before you at present. It seems to me that this is going into the whole case, and in a very remote way at that. It is looking up statistics in Poor's Manual to find out the correspondence, if any, between the indebtedness of roads in the South in comparison with those in Ohio or the official territory.

Mr. MAXWELL: What the witness has already said answers my question. That is as far as I care to go, that the capitalization of the roads in the South does not call for any higher rates.

Mr. WARRINGTON: That raises the question whether that question is relevant.

The CHAIRMAN: It does not appear to me to be of enough consequence in this particular line of inquiry to justify spending much time on it one way or another.

Mr. MAXWELL: Well, we will let it go.

Mr. WARRINGTON: It is in now. It is a question of whether
2086 we should concern ourselves upon such a subject.

The CHAIRMAN: Mr. Grammer, have you anything further to say by way of comparison between soap and other articles based upon your experience and observation or knowledge as a traffic man?

Mr. GRAMMER: My theory about this was as I explained, that if soap has any real analogy to any other particular article of traffic, it is to the packing house product or offal, and that fact—if your classifications have got to be made on analogy—you will come nearer finding an analogy for it in the packing house list than in any other list.

Mr. MAXWELL: Well, we have been invited to a comparison of soap with starch, rice, cereal products and canned goods.

Mr. GRAMMER: Well, from my standpoint I think there is no more comparison or no more analogy between soap and starch than between soap and boots; not a bit. They are made and used for entirely different purpose- and under different conditions and the rates controlling them, both commercially and otherwise, are entirely different. For example soap must necessarily be a product of grease and oils and sodas and that kind of thing. Starch is a
2087 product—95 per cent. of it used in this country is a product of corn. I am one that opposed the placing of starch in the grain list. We have a large list of articles that when the rates on grain change those articles take the same rate as grain. But this fact was presented: here is a manufacturer located on the Lake Shore road running a corn mill. He is making corn flour and grits and hominy and that kind of stuff. We give him milling in transit. Across the road is a man making starch. They buy in the same market and practically sell the output in the same market and it is hardly right to deny the man that is making starch the same rates that you give the man that is making hominy or corn flour or grits. So, when you come to say to a manufacturer of starch that he cannot have comparative rates with the manufacturer of other corn products, it is a proposition that is pretty hard to defend, and my experience has been always that someone falls down on it.

Mr. MAXWELL: Why do you not put the corn grits and hominy man up?

Mr. GRAMMER: That is the other proposition. You take the product of corn whether in starch or any other offal or corn. The average rate this year—and it is about the full average—it has been about two cents a bushel, plus 2½ cents east, which makes
2088 4½ cents; that is about 8 cents a hundred. Now, the manufacturer of starch, grits, hominy or whatever it may be, located at New York, Oswego, or in New England, he goes into the market and buys corn. Take the hominy mills at Toledo, for example. These people buy corn where the Toledo mills buy. It is laid down here at 8½ cents a hundred. The manufacturer at Toledo has to compete in New York with the manufacturer who gets his product laid down at 8 or 9 cents a hundred. You have a proposition to meet. It is a question whether we put this on a corn basis or do without the business. Then it resolves itself into a transportation question. Are you going to do without the product of corn or are you going to assist those men. If we could control it, I do not believe the grain rate would ever be below sixth class. But we cannot control it.

Mr. MAXWELL: Why can you not control it?

Mr. GRAMMER: Because we do not own the Lakes.

Mr. MAXWELL: Then it is water competition?

Mr. GRAMMER: Water competition. It does not make any difference whether you start from the Missouri River or the Mississippi River or go through Galveston, New Orleans or Newport News, whether you start from those points and come to the seaboard
2089 all rail, you have those conditions confronting you. It is a problem of what is best as a commercial question, a transportation question and a question of what will best suit the general interests; and the rates have got down frequently below the remunerative basis. They are below a remunerative basis to-day on grain, but the industries are there and if we allow the places to close we destroy the business, and when you hear the arguments of the men in the business and hear arguments that you can verify and which you know are true, you must meet them or you are out of business and they are out of business too.

The CHAIRMAN: Gentlemen, we will take a recess until 2 o'clock.

At 1:15 o'clock p. m. the Commission took a recess until 2 o'clock p. m.

2090 After Recess.

2 O'CLOCK P. M.

G. J. GRAMMER resumed the stand.

Mr. MAXWELL: There have been suggestions made, Mr. Grammer about the comparative desirability of soap with other articles of transportation. I would like to have your statement as to what, if any, influence you think that ought to have in the matter of classification?

Mr. GRAMMER: Well, it would have some influence, of course. It would be one of many things that would determine a classification of articles.

Mr. MAXWELL: What have you to say with respect to the desirability of soap as compared with other articles in the fifth class.

Mr. GRAMMER: Soap is a good article of traffic but there are plenty other articles of traffic in the fifth class that are better.

Mr. MAXWELL: What?

Mr. GRAMMER: Well, almost all articles of iron manufacture, especially the heavy ones. They are fifth class. You can load fifty, sixty or seventy thousand pounds to a car and that is certainly more desirable business than warehouse business, such as soap.

2091 Common brick is fifth class and every shipper will load a common gondola car to capacity. That has been my experience. In the classification there are over 2,000 articles in the fifth class. It is a great deal of work to go over them but there are several that are more desirable traffic than soap is at the classification.

Mr. MAXWELL: Mr. Colston has picked out bleaching fluid in wood.

Mr. GRAMMER: I really do not know anything about that.

Mr. COLSTON: How about axle grease in buckets and cans?

Mr. GRAMMER: That is as good as soap.

Mr. COLSTON: And app..s, dried and evaporated?

Mr. GRAMMER: Yes, sir.

Mr. COLSTON: That is all.

Mr. MAXWELL: I think that is all we want to ask Mr. Grammer.

2092 Cross-examination:

Mr. WARRINGTON: I take it that the packages—the size and weight of packages has much to do in determining desirability of freight, because it makes the handling easy or difficult. Is not that true.

Mr. GRAMMER: The rule is that the carload traffic is to be loaded and unloaded by the shipper. There are exceptions but that is the general rule by all the railroads.

Mr. WARRINGTON: Is that true as to less than carloads.

Mr. GRAMMER: No, sir.

Mr. WARRINGTON: Then it is an important fact in less than carloads.

Mr. GRAMMER: In less than carloads; yes, sir.

Mr. WARRINGTON: Do you know enough of the density of soap to know whether you can fill a car to capacity with that?

Mr. GRAMMER: Well, I think you could.

Mr. WARRINGTON: Take this Official Classification of Illinois. That has reference only to local freights?

Mr. GRAMMER: Illinois traffic, yes sir.

Mr. WARRINGTON: It is made up by an Illinois board for Illinois railroads?

2093 Mr. GRAMMER: The title is all shown on the page there, yes sir.

Mr. WARRINGTON: What I say is correct, is it not?

Mr. GRAMMER: I think so.

Mr. WARRINGTON: Now, of course, it cannot have any bearing on through traffic or interstate traffic.

Mr. GRAMMER: Not necessarily. Those rates are used on interstate traffic though north and south in some instances.

Mr. WARRINGTON: Now, I want to group with that classification the western and southern. You have made comparisons as to rates, have you not?

Mr. GRAMMER: Yes, sir.

Mr. WARRINGTON: You have not touched upon the question of relativity of articles in those classifications?

Mr. GRAMMER: Not in articles; no sir. I have only take- soap as class five in Illinois and compared it with ours.

Mr. WARRINGTON: You have not taken into consideration or stated any of the reasons why greater rates can be obtained in western territory than in the Official Classification territory.

Mr. GRAMMER: No, sir; I have not stated any reason.

2094 Mr. WARRINGTON: You have not done that in reference to the Southern Classification territory?

Mr. GRAMMER: No, sir.

Mr. WARRINGTON: You have made no comparisons at all between the populations of the respective territories, have you?

Mr. GRAMMER: No, not absolutely; no, sir.

Mr. WARRINGTON: And I suppose as a railroad man you would say that the density of population has something to do with freight rates?

Mr. GRAMMER: It has something to do with it; yes, sir.

Mr. WARRINGTON: Do you know anything about the tonnage of soap that is handled in this country.

Mr. GRAMMER: Not the gross tonnage; no, sir.

Mr. WARRINGTON: Well, I do not know what you mean by "gross."

Mr. GRAMMER: What I mean by the "gross tonnage" is the tonnage handled throughout the United States.

Mr. COLSTON: The aggregate.

Mr. GRAMMER: Yes, sir; the aggregate.

Mr. WARRINGTON: Do you know the average value of competitive soaps?

Mr. GRAMMER: Well, I do not know that I know. I

2095 only know from hearsay that the average value of these common soaps run from about four to six and a half cents a pound.

Mr. WARRINGTON: And that understanding of yours has entered into your consideration whether it is right or wrong.

Mr. GRAMMER: Whether it is right or wrong.

Mr. WARRINGTON: Do you know what the average profits are that are made on the competitive soaps of the country?

Mr. GRAMMER: No, sir.

Mr. WARRINGTON: Well, that would have something to do, I suppose, with what soap will bear.

Mr. GRAMMER: Well, possibly, yes sir.

Mr. WARRINGTON: Taking one of the papers which you used to

refresh your memory, which purports to show rates in the different territories—the one I had in my mind is the scale used by the Atchison, Topeka & Santa Fe Railroad which is supposed to represent western classification territory, is it not?

Mr. GRAMMER: Yes, sir.

Mr. WARRINGTON: Well, I notice that it gives the rate over that road 100 miles, fifth class at 64 cents. Now, do you not know that the charges from Chicago to the Missouri River, say 500 miles, fifth class are 27 cents and that intermediate points certainly can-
2096 not exceed that sum. Now, that leads me to ask you where you got this sheet by which you refreshed your memory and how you know it to be correct.

Mr. GRAMMER: That sheet is made from a copy of the official tariff of the Atchison, Topeka & Santa Fe Railroad as furnished our department and is to us correct. That is, it is to us as much correct as our tariff would be in the hands of the Santa Fe correct to them.

Mr. WARRINGTON: Do you not know the fact to be that fifth class articles can be taken from Chicago to points on the Missouri River, 500 miles, for 27 cents?

Mr. GRAMMER: That may be and they might be three times that to points intermediate.

Mr. WARRINGTON: Do you mean to say if it is interstate business the intermediate rates can exceed the longer distance rates?

Mr. GRAMMER: Yes, sir; and I can give you a hundred cases on the L. & N. to-day right out of Cincinnati.

Mr. WARRINGTON: The Southern roads have been allowed that specially.

Mr. GRAMMER: No, sir; the Southern lines have not been allowed the privilege to much territory *that* they take the privilege.

2097 Mr. WARRINGTON: Have the roads in the western territory been allowed to do so at all?

Mr. GRAMMER: I do not know. I am talking about what they do.

Mr. WARRINGTON: Let me assume that they have not and let me assume that they cannot charge in excess of 27 cents to intermediate points, what then have you to say as to the correctness of the sheet on which y-u base your conclusions?

Mr. GRAMMER: I say that sheet is correct. They may issue commodity tariffs to special points on special business but that copy there is absolutely correct as a copy of the Santa Fe tariff, their distance tariff.

Mr. WARRINGTON: Then you mean to say that while it may be and is, according to your statement, theoretically correct, it is not or may not be practically correct in view of what they actually charge.

Mr. GRAMMER: Yes, sir; they may issue special tariffs to special territory.

Mr. WARRINGTON: You do not know then what they actually do on that subject, do you?

Mr. GRAMMER: No.

Mr. WARRINGTON: That is all I wish to ask Mr. Grammer.

There being no further questions the witness was excused.

2098 D. T. McCABE, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: What is your position?

Mr. McCABE: Freight traffic manager of the Pennsylvania lines west of Pittsburg.

Mr. MAXWELL: How long have you held that position?

Mr. McCABE: Three years.

Mr. MAXWELL: What other experience have you had in railroad service?

Mr. McCABE: I was general freight agent of the P. C. C. and St. L. prior to April 1, 1897, and prior to that assistant general freight agent of the P. C. C. & St. L.; prior to that general western agent of the P. C. & St. L. at Chicago.

Mr. MAXWELL: What is the length of your service as a railroad man?

Mr. McCABE: About thirty years.

Mr. MAXWELL: What, if anything, did you have to do with the adoption of the suggestions of the classification committee that resulted in official classification No. 20.

Mr. McCABE: I am not a member of the Official Classification Committee, but we have a representative on that committee
2099 who is the general freight agent of the Pennsylvania Company. He is a man who has made a very thorough and careful study of the subject of classification and has had some years' experience in it. He represented us at the meeting where the classification committee agreed upon the modifications which are embodied in classification No. 20. I did not examine the classification in detail, the proposed changes in classification as proposed by the Classification Committee. I did go and look over the proposition submitted for the vote of the several roads in the Central Freight Association territory. I talked with Mr. Orr, who was our representative on the committee. He told me that the matter had been gone into very thoroughly.

Mr. WARRINGTON: I object to that.

Mr. MAXWELL: You need not say what Mr. Orr told you.

Mr. McCABE: I conferred with Mr. Orr and governed myself entirely by Mr. Orr's representations.

Mr. MAXWELL: Where in your opinion ought soap to be?

Mr. McCABE: Fifth class.

Mr. MAXWELL: Why?

Mr. McCABE: For the reason that I have always thought when it was classified at less than fifth class it was improperly classified.

2100 Mr. MAXWELL: Why do you think it is improperly classified otherwise than in the fifth class? What reason have you for holding the opinion that soap ought to be in the fifth class.

Mr. McCABE: I think it has no place in sixth class.

Mr. MAXWELL: Why not.

Mr. McCABE: For the reason that the articles classified in sixth class are chiefly crude articles and sixth class includes only in ad-

dition to crude articles in a rough, unfinished state, unmanufactured articles or articles partly manufactured, and it is not my understanding that sixth class was ever intended to cover manufactured articles.

Mr. MAXWELL: What is the general characteristic of the fifth class.

Mr. MCCABE: Fifth class includes a great many manufactured articles and articles that require a low basis of rates, but not so low as sixth class.

Mr. MAXWELL: Can you tell us about how many articles are covered by this classification—how many items or articles.

Mr. MCCABE: I made an estimate. I did not count every article but I should say about 8,200 articles.

Mr. MAXWELL: How many of those are classified in carload lots?

2101 Mr. MCCABE: That I cannot say.

Mr. MAXWELL: Well, what percentage is in the sixth class?

Mr. MCCABE: It is a fraction over four per cent. My recollection is that there — about 400 articles in the sixth class which would be about 4 per cent.

Mr. MAXWELL: It has been a frequent suggestion in this case with reference to the desirability of different articles for carriage. What is your view with respect to the desirability of soap as compared with other articles in the fifth class?

Mr. MCCABE: I think soap is a desirable article, but not more so than any other article in fifth class that can be handled with equal facility and will load to the same tonnage per car.

Mr. MAXWELL: How many articles in the fifth class are there that you consider equally or more desirable than soap. You cannot tell us all, I suppose, but make some suggestion?

Mr. MCCABE: Well, canned goods, packing house products, articles of iron and steel manufacture. Some of those I would regard as more desirable than soap because they will load to a heavier tonnage than soap.

2102 Mr. MAXWELL: What place do you give in your judgment to the element of risk as affecting classification?

Mr. MCCABE: Very little.

Mr. MAXWELL: What is the percentage of loss?

Mr. MCCABE: Well, taking our own business—I cannot answer for any other—it is about three-tenths of one per cent. That is based on the year 1899.

Mr. MAXWELL: You have heard the suggestions that have been made as to a comparison of soap with starch and rice and cereal products. Have you any information on that subject additional to what has been given the Commission?

Mr. MCCABE: I think not.

Mr. MAXWELL: That is all.

Cross-examination:

Mr. WARRINGTON: Your idea about those articles—that is, cereals products—is that they should be carried at such rates as to enable

the manufacturers of those products to compete with one another throughout the country. That is what I conceive to be the commercial condition which you think justifies the rate you put on it. Is that right.

Mr. McCABE: To enable the railroad companies to move them.

2103 Mr. WARRINGTON: Yes, sir; and to move them for what purpose? Is it not to move them from one locality to another, to enable the manufacturers at various points to compete?

Mr. McCABE: To enable the manufacturers to market their goods.

Mr. WARRINGTON: Market them in places where the same goods are manufactured by others. Is that right?

Mr. McCABE: That would naturally follow.

Mr. WARRINGTON: You believe in that as principle?

Mr. McCABE: Well, that seems to be correct.

Mr. WARRINGTON: Now, when you stated that soap has no place in the sixth class because the articles there are in a crude state, I suppose you temporarily forgot that there are manufactured articles in the sixth class?

Mr. McCABE: Well, if there are, there are very few.

Mr. WARRINGTON: Do you know whether there are?

Mr. McCABE: I do not recall now any manufactured articles in sixth class.

Mr. WARRINGTON: I suppose you know that starch and grits and the like are in the sixth class, so far as your classification is concerned.

Mr. McCABE: Starch is fifth class in the classification.

2104 Mr. WARRINGTON: Well, it is given a commodity rate as low as the sixth class, is it not.

Mr. McCABE: That may be correct, but that is not the classification of starch.

Mr. WARRINGTON: What have you to say of tobacco—leaf tobacco, say, in hogsheads? Why should that be as desirable an article as soap?

Mr. McCABE: Tobacco is not in the fifth class.

Mr. WARRINGTON: I know; it is in the sixth class.

Mr. McCABE: No, it is in the fourth class.

Mr. WARRINGTON: Unmanufactured?

Mr. McCABE: Unmanufactured tobacco.

Mr. WARRINGTON: Is where?

Mr. McCABE: In the fourth class.

Mr. WARRINGTON: Are you sure of that.

Mr. McCABE: I will refresh my recollection. I have a copy of the classification here. (Witness refers to classification.) It is in the fourth class.

Mr. WARRINGTON: Where is it as a matter of fact? Is it given a commodity rate?

Mr. McCABE: No, the fourth class rate is maintained to the best of my knowledge and belief.

Mr. WARRINGTON: On unmanufactured tobacco in hogsheads.

Mr. McCABE: Yes, sir.

2105 Mr. WARRINGTON: What is the rate between Cincinnati and St. Louis?

Mr. McCABE: I cannot tell you.

Mr. WARRINGTON: Let me suppose this, that soap was rightfully in the sixth class and was rightfully there because it cost less per ton per mile to handle it than the average rate per ton per mile received by the roads in the official classification territory. Can you state any reason why it should be selected out to go to a higher class? Let me change that question. Suppose that soap was carried for years at a cost less than the average rate per ton per mile received by the railroads in the official classification territory; suppose it to be as desirable an article for freight as you have stated it to be; can you state a reason and if so do state it, why it should have been selected out and put into a higher class.

Mr. McCABE: Well, I do not understand that those conditions prevail.

Mr. WARRINGTON: Well, do you say that those are not the facts.

Mr. McCABE: I do not know that it is a fact.

2106 Mr. WARRINGTON: Now, then, if you do not know it to be untrue, let me ask you to assume it to be true for the purposes only of this question, Mr. McCabe; then I will ask you to assign the reason to the commission why it should have been removed from its class.

Mr. McCABE: Well, if soap could be transported cheaper than any other article in the classification, possibly we might be justified in making a lower rate on soap than any other article.

Mr. WARRINGTON: That was not exactly my question. Suppose it to have been handled at a cost per ton per mile less than the average rate per ton per mile received by the railroads in the Official Classification territory for freight.

Mr. McCABE: I do not know why we should select soap and legislate especially on soap in preference to any other article that might have been carried at the same rate per ton per mile as soap, assuming what you say.

Mr. WARRINGTON: I am assuming that and want you to give some reason to the Commission for taking soap out and advancing it. Why was not that a reason for reducing if you were going to make any change at all rather than increasing it.

2107 Mr. McCABE: Well, I do not think those conditions—if it is true that they did exist—were apparent to the classification committee when they made the change on the subject?

Mr. WARRINGTON: Do you know what you receive per ton per mile for handling freight?

Mr. McCABE: I do not.

Mr. WARRINGTON: That is all.

There being no further questions, the witness was excused.

2108 FRANK HARRIOTT, a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. MAXWELL: What is your business, Mr. Harriott.

Mr. HARRIOTT: Eastern freight traffic manager of the Erie Road.
Mr. MAXWELL: How long have you held that office?
Mr. HARRIOTT: Since July 1st.
Mr. WARRINGTON: This year?
Mr. HARRIOTT: Yes, sir.
Mr. MAXWELL: What was your office prior to that?
Mr. HARRIOTT: Prior to that I was general freight traffic manager of the system. It was afterwards divided. Prior to that I was freight traffic manager of the Baltimore & Ohio and filled various offices from contracting agent up from 1874?
Mr. MAXWELL: I believe you are a member of the classification committee?
Mr. HARRIOTT: Yes, sir.
Mr. MAXWELL: What, if anything, did you have to do with the adoption of Official Classification No. 20, by any railroad, aside from your recommendation as a member of the Classification Committee.
2109 Mr. HARRIOTT: When the classification came out I conferred with the vice president of our road, went over some of the matters he brought to my attention and we voted aye on that classification.
Mr. MAXWELL: How many members of the Classification Committee are there.
Mr. HARRIOTT: Fourteen, if I remember aright.
Mr. MAXWELL: What is the method of procedure in your committee.
Mr. HARRIOTT: The method of procedure in our committee is to consider the various requests that come in from time to time between the meetings of the committee which are twice a year; to go over them, tabulate them, have reports both from the parties recommending and also get our chairman and secretary to go in and get for us whatever details may be necessary to give us a thorough understanding of the article. Then, the question comes up for discussion and frequently there are a great many questions asked about the article its uses, the weight per load per car, the liability to damage or to damage other articles—the latter being quite a factor—and a thorough discussion is given to the subject, and then it is voted on. Sometimes the votes are enough negative to show the sense of the committee;
2110 at other times the vote is largely in favor of the article and as a rule if the vote is very largely in favor of the article it is adopted. Each man, however, on that committee, being a railroad man reserves the right to go home and vote "No" if he wishes or if his people think that that is the right position for him to take.
Mr. MAXWELL: Is it practicable or possible to adopt a change in classification if it is disapproved by any important railroad?
Mr. HARRIOTT: It would be possible to adopt the classification even with the disapproval of a road, its remedy being, as a rule, if they disapprove of it to go home and issue a commodity tariff. Now, those commodity tariffs, I would like to say to you, are sometimes through commodity tariffs, that is, when they pass through trunk lines and central freight asociation lines. Sometimes they are com-

modity tariffs simply covering trunk line territory or, *vice versa*, central freight association territory.

Mr. MAXWELL: Was there any special discussion as to the place soap ought to take in this revision?

Mr. HARRIOTT: No, sir; not that I remember in the committee.

Mr. MAXWELL: Was there any member of the committee
2111 that disagreed to the advance on soap?

Mr. HARRIOTT: I do not remember any.

Mr. MAXWELL: Was there any dissent on the part of any traffic manager, so far as you know, or any railroad to the advance of soap to the fifth class.

Mr. HARRIOTT: I think not.

Mr. MAXWELL: Where do you think it ought to be?

Mr. HARRIOTT: Fifth class.

Mr. MAXWELL: After the classification was recommended was there any hearing of the objections of the soap men, and if so, what?

Mr. HARRIOTT: Yes, sir; there was a general hearing in this room on a whole lot of articles, nearly everybody objecting to the change in a great many of the advanced articles and that brought about a compromise on less than carloads.

Mr. MAXWELL: Aside from the general hearing that was given to soap manufacturers did any representative of Procter & Gamble present his views to you?

Mr. HARRIOTT: Yes, sir; I have seen Mr. Macdonald on this question, I think, once or twice.

Mr. MAXWELL: Did he submit his argument to you?

Mr. HARRIOTT: I do not know whether he submitted a reg-
2112 ular brief or not, but he certainly submitted them orally.

Mr. MAXWELL: Did you give those views, arguments or claims consideration.

Mr. HARRIOTT: Certainly.

Mr. MAXWELL: Now, will you please tell the Commissioner why you think soap ought to be in the fifth class and not in the sixth.

Mr. HARRIOTT: Well, I think soap ought to be in the fifth class for this reason: I think the fourth would be too high and the sixth would be too low. The article itself, according to classification, is made up very largely of articles either in fifth or sixth class. I think resin is sixth and I believe that soda-ash is sixth. Those are the two prominent articles that go into the manufacture of soap in sixth class. Certainly the manufactured article, ready to go into consumption is properly placed at least one class higher than the crude material from which it is made. Then, another thing that influenced me in regard to the matter was that soap is largely considered a grocery product. It should be according to its packing and price, &c., we thought it should go where sugar, canned goods and various articles of that character go not only on account of its being a grocery product, but
as you know, under our classification we have carload rat-
2113 ing for articles bearing the same classification. Now, it is the habit of jobbing grocers to make up a carload here in the east and send them to prominent towns where a grocer can take a carload, and these fifth class articles are all bunched together and take

the fifth class rate at carloads. That was another reason to my mind why they should be classed together with these other grocery products So far as the carload rating of straight soap was concerned, we did not think that to distant points they should pay less than the sugar or canned goods or other articles when it was classed entirely as a carload of soap as a grocery product.

Mr. MAXWELL: Something has been said about the desirability of soap. What do you say as to the desirability of soap compared with other articles of the fifth class.

Mr. HARRIOTT: Well there are other articles in the fifth class as good and better than soap. There are chemicals of various kinds put up in drums, cases and kegs, salaratus and sodas, &c.; there is pitch in barrels; articles of iron without end. Then you take heavy, rough papers, and sugar and block tin and putty, &c. all of which will load as heavy or heavier than these other goods the soap.

Mr. MAXWELL: A comparison has been invited between
2114 soap and starch, rice and cereal products. What do you say about that?

Mr. HARRIOTT: Well, I am not a believer in the rate on starch. Starch was classed the same as soap and other grocery products. I understand that in the west a number of years ago they got starch put in what they call the cereal product class. I think it must have been eight or nine years ago when they first put it in. It has been taken out since and then restored. Now, one of the contentions, as I understand it from the gentlemen who are in charge in the west, on this cereal product business is the fact that starch is very largely exported. That was one of his contentions, and as such, it had to meet the starch competition on the other side, which starch is largely made of potatoes, I understand. It also had to meet cheap flours which are used for finishing various articles. It also meets a starch that is made from refuse. I call it a starch; it is more of a filler made from the refuse rice on the other side. And they insisted that as long as corn meal and other corn products were put in the commodity list that starch ought to go there and must go there and the fight was so strong that they finally disregarded the classification and made it. Now, there was a commodity rate put in from
2115 the seaboard. The commodity rate eastbound is based on fifteen cents, if I remember right, eastbound from Chicago, taking the same as the flour ratings, while the westbound commodity tariff was made sixth class. So it did not meet the rates eastbound. It is one of those peculiarities or anomalies in the railroad business that you are carrying starch west at sixth—that is 25 cents—and you are bringing it east on a basis of 15. I am taking Chicago as a basing point.

Mr. MAXWELL: Does it take grain rates?

Mr. HARRIOTT: It takes the flour basis, based on grain.

Mr. MAXWELL: Is that variable or constant?

Mr. HARRIOTT: Well, it has been very variable.

Mr. MAXWELL: Between what figures has it varied, say the past year or the past two years?

Mr. HARRIOTT: Well, they have had it up to the 25 cent basis and down as low as 12 cents.

Mr. MAXWELL: Does water competition have anything to do with that.

Mr. HARRIOTT: Oh yes sir. That is one of the troubles, the water competition from Chicago and Duluth and Toledo and Cleveland and everywhere else where traffic can strike the Lakes coming to Buffalo and then either by rail to New York or by water by
2116 canal. Then, of course, the Montreal competition is very strong and even New Orleans takes a little hand in it once in a while.

Mr. MAXWELL: What influence does these commercial conditions have on classification and rates?

Mr. HARRIOTT: I think the commercial conditions have more influence in classification and rates on export business than they do on domestic. The commercial conditions vary somewhat. So far as the local commercial conditions are concerned, those I do not believe govern like the commercial conditions on the export traffic. The export traffic to-day, I am sorry to say has about as much influence on rates, if not more, than any other condition that exists. The manufacturers have got a taste of the other fellow's field and want to keep it up and I think they push us more on the export conditions than on anything I know of.

Mr. MAXWELL: Well, how does that affect classification, that is, the export trade?

Mr. HARRIOTT: Well, it affects classification by gradually lowering the classification, gradually lowering the basis, and outside of classification, which of course they are interested in as a rate it brings in with it a whole lot of commodity tariffs.

2117 Mr. MAXWELL: I believe you have not answered the question I put in reference to the suggestion of a comparison of soap with rice.

Mr. HARRIOTT: You did not ask me about rice, I think. Rice is looked on as a cereal and of course the South is largely interested in that. Some of it comes to the port of New York—water to New York and then rail to the West. It is handled in bags and also in what they call tierces. It is largely competitive with other cereal products and for a number of years has been classed about as low as any other cereal product. It is in competition with cereals and it goes in also on the other side, I think, it is in competition with starch.

Mr. MAXWELL: What, if any, influence is given to risk as an element of classification?

Mr. HARRIOTT: Well, very little, except certain things like acids and articles in glass that would break and damage not so much themselves as other traffic, surrounding traffic in a car. There are certain chemicals we are afraid of like chlorines, &c., but the general question of risk on account of the value of the article is not given much consideration.

2118 Mr. MAXWELL: Would a difference of a few cents a pound be taken into consideration in classifying?

Mr. HARRIOTT: No, sir; there is a difference of a few cents a pound in the same articles—a great many cents a pound sometimes; for instance*m* you take the value of common soap. I think it is worth about $4 a box or something like that, and you come to take

e higher grade soaps—I know what we have to pay for them by
ail, and I know there must be a very wide difference between them.
Mr. COLSTON: Toilet soaps.
Mr. HARRIOTT: Yes, sir. They are worth sometimes forty or fifty
nts.
Mr. MAXWELL: And you charge the same?
Mr. HARRIOTT: Yes, sir; we charge the same, and I think that is
per for the reason that we have so much difficulty in getting an
icle handled justly and properly by the public. Some houses
ll handle their goods and handle them honestly, but you find some
low that will not, and you have all kinds of criminations and re-
minations. We cannot insist on an ad valorem like the United
ates Government without opening every package and that is very
jectionable.

Mr. MAXWELL: What influence do you give to physical
19 analogies between different articles in determining classifica-
tion.
Mr. HARRIOTT: Well, the physical condition—by that you mean
ight?
Mr. COLSTON: Yes, sir; bulk.
Mr. HARRIOTT: That is one of the dominant factors in making
assification. What we want if we have a 60,000 pound car we want
load 60,000 pounds. Any article that will load 60,000 pounds
e consider more favorably than one that will load 30,000. If we
t it in the same class our revenue will be doubled for the same
stance and I think to-day the dominant factor in making classifica-
on is the question of how much weight you can get in the car.
ow, for instance, in sixth class we have steel billets, worth anywhere
om $25 to $40 a ton, and we have copper ingots, worth $300 a ton.
ither one of them will break down a car. Either of them is sixth
ass. They are indestructible. You can smash up a freight train
nd you can pick them up.
Mr. MAXWELL: In making your tariff or classification do you
ke into account the competition in the market of the manufacturers
dealers in the article, and if so, what influence do you give to it.

Mr. HARRIOTT: Well, that is taken in incidentally, but it
120 is no dominant factor in making a classification. It is the
competition of water—for instance, you take New Orleans
s against New York or you take Mobile as against New York, that
ight have an influence on making classification. If the Southern
eople made a low classification from those places, why in order to
rag away the property from the North Atlantic ports, there is a com-
nercial condition, I should call it, that we would have to meet.
Mr. MAXWELL: That is because you would not get the freight
nless you met it?
Mr. HARRIOTT: Yes, sir; but if it is merely a manufacturer at
ne point and a manufacturer at another point, they all ship back
nd forth if they get a relative rate.
Mr. MAXWELL: Do you let it govern your classification whether
ne manufacturer competes with another manufacturer and what
he difference is in competition, whether it is fierce or slight?

Mr. HARRIOTT: I do not think that has any great bearing. Of course, the hue and cry frequently from manufacturers in the west is against the eastern men, and *vice versa*. Frequently both of them will come in at the same time and ask for a reduction. We look on it, if you give a reduction to one, who is benefited except the consumer. So far as we are concerned, if we have a just and
2121 reasonable rate—if we get a reasonable rate we think we ought to maintain it.

Mr. MAXWELL: If you get a reasonable rate do you undertake to interfere with the compet-tion of manufacturers or make your classification with reference to the competition between the trade.

Mr. HARRIOTT: No, sir; we do not.

Mr. MAXWELL: That is all.

Cross-examination:

Mr. WARRINGTON: When your committee met last December it met for the purpose of making a new classification, did it not?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: The object in view was to get more revenue for the railroads?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Each member was actuated by that knowledge and motive?

Mr. HARRIOTT: Well, I cannot say each member, but certainly I was.

Mr. WARRINGTON: And so far as you observed the others, that was so, was it not?

2122 Mr. HARRIOTT: Apparently.

Mr. WARRINGTON: Now, that led you to a consideration of how you would get the additional revenue, did it not?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: You say that so far as soap was concerned there was no discussion in the committee of any reason why it should be taken from sixth and put into fifth class?

Mr. HARRIOTT: There was no discussion particularly in that committee on soap.

Mr. WARRINGTON: Do you know on your road what the average rate per ton per mile for hand-ing freight has been in the last ten years?

Mr. HARRIOTT: No, sir; I cannot remember.

Mr. WARRINGTON: Do you know what the average cost per ton per mile has been on that road in that time?

Mr. HARRIOTT: No, sir; that is a transportation question. I could not answer that.

Mr. WARRINGTON: Your relation to the railroad was never such as to enable you to know anything about that?

Mr. HARRIOTT: Well, from time to time I have heard it and it is in the annual report.

Mr. WARRINGTON: That was a thing you could easily
2123 ascertain when it was necessary?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: I take it that the cost of handling an article has something to do with the place it shall take in the classification, does it not.

Mr. HARRIOTT: Very little, unless it is a very heavy article.

Mr. WARRINGTON: If there are no commercial conditions such as you have indicated, I presume you would consider the cost of handling the article of freight, would you not?

Mr. HARRIOTT: Well, all freight is actually about on the same basis—any ordinary package freight is actually at about the same cost.

Mr. WARRINGTON: That is to say it does not make much difference what the article is? Let us see. Suppose the article is so bulky that you cannot fill a car to its capacity. You may fill it, but it will not weigh up to the capacity of the car.

Mr. HARRIOTT: Then we give it a higher rating. The handling cuts little figure.

Mr. WARRINGTON: I know, but the cost of handling that is more than where you can by small bulk fill up to the capacity.

2124 Mr. HARRIOTT: Sometimes and sometimes not.

Mr. WARRINGTON: Well, there may be differences.

Mr. HARRIOTT: There may be differences; yes, sir.

Mr WARRINGTON: I suppose, for instance, it would cost you more to handle feathers than it would to handle lead?

Mr. HARRIOTT: I do not know. It would depend altogether on how big the bales were.

Mr. WARRINGTON: It would be difficult to fill a car to capacity with feathers, would it not?

Mr. HARRIOTT: You take hay. That car is filled to the roof. It will not cost you any more to handle twenty tons of hay than twenty tons of pig lead, but if you have forty tons of pig lead, it will. It does not cost you any more to handle per ton when you get it properly adjusted on a bulky article like hay than on lead.

Mr. WARRINGTON: Suppose you make up a trainload. You have your locomotive and twenty cars. You have your crew to handle that train. You have to make 100 miles. You do not mean to state to this Commission that it would not cost more to handle feathers than lead?

Mr. HARRIOTT: Oh, I misunderstood your question. When you talked of a handling charge, I thought you meant picking up

2125 and handling. It costs you more to carry forty tons than twenty, of course.

Mr. WARRINGTON: It costs you more to transport feathers than soap, when you consider tonnage?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Well, now, that principle runs through all freight rates and freight traffic?

Mr. HARRIOTT: We make higher rates on the lighter goods.

Mr. WARRINGTON: So as to make up for the bulk?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: If you do not know what it costs per ton per mile to handle a given article, say for a period of five or ten years,

and there are no commercial conditions affecting the subject, as you define commercial conditions, how do you know when you are coming to a classification why you should take one article rather than another and place it in a given class.

Mr. HARRIOTT: Well, we advance in a classification and frequently reduce in a classification on something like analogy, and so far as the advance is concerned that you are speaking of, we took that with a lot of other articles and advanced it because we thought it was proper to make an advance on that as on others. We took
2126 them from one and put them into the other class.

Mr. WARRINGTON: In doing that you make no difference between an article highly competitive in its production and sale and an article which is not competitive at all in its production?

Mr. HARRIOTT: We did not consider that soap was any more competitive——

Mr. WARRINGTON: I am not now speaking of soap. I am trying to get at the principle.

Mr. HARRIOTT: We did not pay any attention to the competition between the manufacturers on these articles.

Mr. WARRINGTON: That is a thing that does not concern you at all?

Mr. HARRIOTT: Not in the cases we have had before us lately?

Mr. WARRINGTON: Well, do you take into consideration anything except the interests of the railroad company?

Mr. HARRIOTT: Well, that is the dominant one. Yes, sir; we consider other things at times.

Mr. WARRINGTON: When you came to soap, did you consider anything outside of the intersts of the railroad company?

2127 Mr. HARRIOTT: No, I think not.

Mr. WARRINGTON: Did you as to sugar?

Mr. HARRIOTT: No, sir.

Mr. WARRINGTON: Did you as to canned goods?

Mr. HARRIOTT: No, sir.

Mr. WARRINGTON: The truth was that you did not name or have in mind any reason except that you wanted morr revenue when you moved those articles up, did you?

Mr. HARRIOTT: That is right.

Mr. WARRINGTON: Now, let me take rice, for instance. What cereals does rice compete with?

Mr. HARRIOTT: I think with all the cereals. That is, it competes with breakfast foods of various kinds and oatmeal and all off what we call cereal products.

Mr. WARRINGTON: What are the relative values of the articles you have just mentioned?—rice and oatmeal?

Mr. HARRIOTT: Well, I do not know, sir. I think rice is five or six cents a pound. I have a general impression that that is about the price of it.

Mr. WARRINGTON: Well, what are the corn products per pound?

Mr. HARRIOTT: About the same, I think.

Mr. WARRINGTON: And oatmeal?

2128 Mr. HARRIOTT: I think oatmeal is cheaper.

Mr. WARRINGTON: Is hominy?

Mr. HARRIOTT: I think hominy is cheaper.

Mr. WARRINGTON: Well, now, take corn. What is corn worth per pound in comparison with rice?

Mr. HARRIOTT: Well, I should think corn is worth about one quarter of what rice is.

Mr. WARRINGTON: Take wheat?

Mr. HARRIOTT: Well, that is a little higher than the corn, not very much—about one half higher.

Mr. WARRINGTON: Rye.

Mr. HARRIOTT: Well, about the same.

Mr. WARRINGTON: Well, now, how can those articles be in competition.

Mr. HARRIOTT: Well, I do not think the few cents a pound always limits the use of an article. They are all looked on as competitors—wheat, and corn and rye and oats, and barley for that matter, and rice. They are all looked on as cereals. They all compete with one another.

Mr. WARRINGTON: Now, let us see. If these differences in price do not influence the sales of the article, why do you have to make commodity rates to meet the conditions and move the articles?

2129 Mr. HARRIOTT: Well, I explained why the commodity rate, according to my idea was made eastbound on starch and on cron &c., and then I explained why we made it westbound at a somewhat higher basis to meet that competition.

Mr. WARRINGTON: I know, but I do not think you have answered the question. I understand you to say that rice is a competitor and yet the differences in prices or values do not prevent that competition. Now, I am asking you why you have to reduce rates in order to meet any commercial condition, as you call it, if you are right in your premise.

Mr. HARRIOTT: Reduce rates on rice?

Mr. WARRINGTON: Yes, sir; rice or cereals. In other words, I think you must be mistaken. Either rice is not a competitor of the cereals or price has nothing to do with your rates and so compel you to make commodity rates.

Mr. HARRIOTT: We have always considered rice a cereal and in competition with cereals, especially with breakfast foods. That has been the cry for years. Whether these people are right or wrong, I cannot tell you, but that has been the ground for it, that rice is a cereal and should be handled as a cereal.

Mr. WARRINGTON: Why would not any food article be a competitive article?

2130 Mr. HARRIOTT: It would to a certain extent, but if it is a cereal and in the grain, as rice is, it approaches nearer a cereal than if it was manufactured.

Mr. WARRINGTON: Do you know what proportion of the rice consumed in this country is imported?

Mr. HARRIOTT: No, sir; I could not tell you that.

Mr. WARRINGTON: Can you answer that same question as to the exports of starch—what proportion of the starch produced in this country is exported.

Mr. HARRIOTT: Well, in a general way—I see it going all the time—I should say it is pretty heavy. I can not give the number of pounds or tons.

Mr. WARRINGTON: Can you give the volume, the amount consumed, the amount imported or the amount exported? Have you any of those data?

Mr. HARRIOTT: I am just talking from recollection. It seems to me I heard a statement some time ago that there was about a thousand million pounds of starch made and of that, my impression is, there was something like twelve or fifteen per cent. exported. I am only giving you impressions. Now, as to rice, I cannot call to mind now. I did know at one time the amount of rice imported, but the bulk of it was used in beer manufacture and the
2131 country here taking most of its supply from our own Southern States.

Mr. WARRINGTON: Can you tell me where you obtain your statistics as to the quantity of rice used in beer?

Mr. HARRIOTT: It was when I was in Baltimore and I got it from some of the people connected with the North German Lloyd.

Mr. WARRINGTON: Well, the North German Lloyd is a steamship line.

Mr. HARRIOTT: Yes, sir; and you must recollect that Bremen is the port from which 90 per cent. of the rice brought into this country for brewery use comes from, and they are better able to judge of that, I think, than anyone else. I think they are a pretty good authority.

Mr. WARRINGTON: Now, what is it that makes you give a commodity rate on starch? Is it the export traffic?

Mr. HARRIOTT: The commodity rate on starch was made by the western lines and acquiesced in by the eastern lines, and I understand that that was one of the dominant factors in getting the starch down.

Mr. WARRINGTON: Yet only 15 per cent. of it is exported.

Mr. HARRIOTT: I said that from hearsay. I have not seen the figures.

2132 Mr. WARRINGTON: Why is it necessary to carry the commodity rate beyond the export traffic?

Mr. HARRIOTT: I do not think it is.

Mr. WARRINGTON: Why can you not do with starch as you do on grain in that respect?

Mr. HARRIOTT: Well, we have tried to do that a number of times, but if there is a lower rating the pressure is too great, and down it goes. I am not justifying it.

Mr. WARRINGTON: Now, let me give you a simple illustration. You say you are opposed to the reduction on starch. You would class starch with soap if you had your way about it.

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Because you think that relatively starch is no better or more desirable as a freight article than soap? Is that it?

Mr. HARRIOTT: I think that as grocery products they ought to be classed together.

Mr. WARRINGTON: But as a matter of desirability as a freight article it is not as good as soap, is it?

Mr. HARRIOTT: I do not think it is. I do not think it is quite as heavy.

Mr. WARRINGTON: Now, then, take your classification.

2133 What would you say as to its reasonableness if as between inferior towns like Cincinnati and Pittsburg it is 7½ on starch and 15 on soap? What reason is there for that?

Mr. HARRIOTT: I do not know of any reason for it.

Mr. WARRINGTON: Do you not consider it unreasonable?

Mr. HARRIOTT: If that is the case, I think probably it is unreasonable.

Mr. WARRINGTON: I want to ask you another thing about competition. You do yield to competition wherever it interferes with the railroad?

Mr. HARRIOTT: Wherever we are forced to.

Mr. WARRINGTON: You do not, however, heed competition if it interferes with shippers?

Mr. HARRIOTT: Sometimes we give that consideration.

Mr. WARRINGTON: I do not understand that you did that in this classification. I understand that you did the contrary.

Mr. HARRIOTT: I have not seen that it interfered with the business.

Mr. WARRINGTON: You did not consider that question.

Mr. HARRIOTT: No, sir; we did not have that question.

Mr. WARRINGTON: Now, when you were speaking of grocery articles you were considering or having in mind less than

2134 carload lots necessarily, were you not? When you speak of jobbers sending a part of a carload of starch, a part of soap, a part of sugar and a part of coffee and the like?

Mr. HARRIOTT: Oh no.

Mr. WARRINGTON: Why were you not?

Mr. HARRIOTT: I tried to make that clear. If a jobber can take all the fifth class ratings of grocery products, if he can take 5,000 pounds of one article, 5,000 of another and 10,000 of another so as to make up a whole carload of fifth class, although he ships each lot less than a carload, the aggregate he carries at fifth class rate.

Mr. WARRINGTON: Yes, sir; if he has enough of those articles?

Mr. HARRIOTT: That is right.

Mr. WARRINGTON: You know that the packers for instance, at Chicago who send fresh meats to various portions or parts of the country and provisions and who make soap can make up carload lots that way? You know that, do you not?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: You know that gives them the opportunity to make fifth class rates on less than carload lots on any one of those articles?

2135 Mr. HARRIOTT: If they are classed as fifth class; yes, sir.

Mr. WARRINGTON: Well, assuming that each one of them would go in fifth class if there were a carload of that article?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Then, they can put as many as they choose in of each and classify it as fifth class?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Now it is apparent that that gives a great advantage to anyone who can do that. Do you know where any jobbers outside of the packers do that? If you do, tell us.

Mr. HARRIOTT: Yes, sir. I do not think there is a big city like Philadelphia, New York or Boston, or anywhere, where the big grocery houses do not more or less send out carload lots to grocers a reasonable distance, 150 to 200 miles.

Mr. WARRINGTON: Where do they find a retailer who can take a carload of those articles?

Mr. HARRIOTT: Take a man at Binghampton, Elmira, Rochester, Syracuse, Albany or Buffalo, they come down here and they order goods and certainly it is nothing unusual for them to order
2136 enough to make a carload of sugar and syrups and canned goods of various kinds and chemicals of various kinds like soda bicarbonate and saleratus and get the fifth class rating rather than pay the less than carloads. There are houses at those places that are big houses. They call themselves jobbing houses.

Mr. WARRINGTON: Suppose we cannot include soap. Suppose 90 per cent. of the soap product goes from the manufacturer direct to the retailer, then your classification does not aid that traffic, does it?

Mr. HARRIOTT: We do not know that.

Mr. WARRINGTON: Suppose it does not go to the jobber and so enable him to make up those mixed carload lots, then the advantage cannot go to soap.

Mr. HARRIOTT: Not if what you state is correct. We did not know that. We have always looked on it as a grocery product.

Mr. WARRINGTON: You made no inquiry whether it was a grocery product or whether it went directly in the way I mention.

Mr. HARRIOTT: No, sir; we did not ask that.

Mr. WARRINGTON: Mr. Harriott, as a railroad man, I suppose you consider the opportunity to get double hauls a very desirable
2137 thing, do you not?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: That is, taking the raw material to the factory and then taking the product away.

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: That is one of the dominant factors in determining the rating of an article, is it not?

Mr. HARRIOTT: No. In the classification I do not think that is a dominant factor. We know that where a manufacturer is established along the line that he will bring in the raw material and will turn out the finished product, and we like to see that done.

Mr. COLSTON: You cannot give him a better classification on that ground?

Mr. HARRIOTT: No, sir; unless we make a commodity rate for the coarse freight.

Mr. WARRINGTON: Your proposition, as I understand you, is that the manufactured product ought to go one degree above the raw material rate.

Mr. HARRIOTT: Naturally we think that; yes, sir.

Mr. WARRINGTON: It ought not to go too, ought it?

Mr. HARRIOTT: Well, sometimes it depends upon the article, but it certainly ought to go one.

2138 Mr. WARRINGTON: Would not the question of value cut some figure in that?

Mr. HARRIOTT: Well, very little. The question of value will cut very little figure in that.

Mr. WARRINGTON: Suppose soap is 2½ and tallow 5.

Mr. HARRIOTT: Well, I do not know as that would cut any figure because certainly there must be something else in there that the cost is lower.

Mr. WARRINGTON: Do you contend that sugar is a more desirable freight in the abstract than soap.

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Why?

Mr. HARRIOTT: The majority of the sugar now is shipped in sacks. They have abandoned barrels as a rule and they load it, I should say, forty-five or fifty thousand pounds to the car, and sometimes higher. So long as we can get that loading in, it is very heavy, very compact and it is better than boxed goods that load lighter.

Mr. WARRINGTON: I do not understand that last sentence. You get the same rate on the boxed goods?

Mr. HARRIOTT: The boxed goods will not go to forty-five to fifty thousand pounds to the car. They are not as dense.

2139 Mr. WARRINGTON: Can you not load your cars to their capacity with soap?

Mr. HARRIOTT: I do not know whether we can or not, but I do not think we have it done. The other man loads the cars and it depends a good deal on whether the carload going to the customer, whether he wants fifty thousand pounds or whether he wants thirty thousand.

Mr. WARRINGTON: That is the same on *suagr*?

Mr. HARRIOTT: Oh, no; sugar goes in immense quantities. For instance, there are a thousand barrels or two thousand barrels of sugar sold to one man. They load that car to the roof. The bulk of it at that time of year goes by Lake and rail and they do not care whether you put in a 40,000 pound or 60,000 pound car; they will stuff it full.

Mr. COLSTON: Why does not that apply to coffee?

Mr. HARRIOTT: Coffee like all case goods will not load as heavy as sugar.

Mr. WARRINGTON: It will not load as heavy as soap?

Mr. HARRIOTT: No, sir. I do not think it will load over twenty-five to twenty-seven thousand pounds to the car.

Mr. WARRINGTON: What is the minimum for sugar?

Mr. HARRIOTT: I think it is 24,000 pounds—either twenty-four or thirty.

2140 Mr. WARRINGTON: What is it for soap?

Mr. HARRIOTT: I think it is the same.

Mr. WARRINGTON: What is it for coffee?

Mr. HARRIOTT: The same.

Mr. WARRINGTON: What for starch?

Mr. HARRIOTT: I think it is the same—all in fifth class; but there is a big difference in fifth class loading. Sugar, on the through traffic, where it is sold by thousands of barrels, you can load your car to the roof.

Mr. WARRINGTON: All the sugar practically of the country is shipped out of New York?

Mr. HARRIOTT: No, sir.

Mr. WARRINGTON: What proportion?

Mr. HARRIOTT: Well, as against Philadelphia we ship about two-thirds of the sugar.

Mr. COLSTON: You mean by "we" New York?

Mr. HARRIOTT: Yes, sir; New York. Philadelphia ships about 33 per cent. as against New York, taking the two cities as 100 per cent. Those are the two largest manufacturers. I should say that New York ships 66 per cent. as against their 33.

Mr. WARRINGTON: Well, Philadelphia is reached from the seaboard the same as New York, except that it is a little further
2141 inland. What proportion of the whole quantity of sugar goes from the two cities.

Mr. HARRIOTT: That is very hard for you to tell. Do you mean as against all the other seaboard cities or taking in New Orleans and San Francisco?

Mr. WARRINGTON: Taking in New Orleans and San Francisco.

Mr. HARRIOTT: Well, I think there may be 10 per cent., maybe 15 per cent. of the whole shipment goes from Boston. It might be even a little higher than that.

Mr. WARRINGTON: How much from Philadelphia and New York.

Mr. HARRIOTT: Well, the remainder, 85 or 90 per cent., would go from here.

Mr. WARRINGTON: That is of the whole consumption of the country.

Mr. HARRIOTT: Oh no. That is just the output from the three Atlantic cities.

Mr. WARRINGTON: Take the whole consumption of the country. What part goes from the seaboard towns?

Mr. HARRIOTT: I could not answer you that.

Mr. WARRINGTON: You are not able to?

Mr. HARRIOTT: No, sir.

2142 Mr. WARRINGTON: When you make the reduction of 20 per cent. below third class for*th* less than carload lots, you extended that to everything in the class, did you not?

Mr. HARRIOTT: I think we extended that to everything we advanced?

Mr. WARRINGTON: Do you know how many articles are reached.

Mr. HARRIOTT: I think two or three hundred.

Mr. WARRINGTON: That was what you considered to be a fair way to meet what you conceived to be——

Mr. HARRIOTT: I did not like the proposition, but I acceded to it.

Mr. WARRINGTON: Well, that method was all right to reach the result, whether the result was right or wrong? Is that right?

Mr. HARRIOTT: I did not think we ought to make the reduction in that way, but I was overruled.

Mr. WARRINGTON: This reduction of 20 per cent. has worked out practically to the result you wished to reach as a committee when you ordered that?

Mr. HARRIOTT: Well, I would not like to say that.

Mr. WARRINGTON: So far as you have observed, it has?

Mr. HARRIOTT: No, I do not think it has given us the revenues we should have had. I think the 20 per cent. reduction was
2143 too much.

Mr. WARRINGTON: That is not what I am seeking to ask. I am not asking you whether it should be 20 per cent. or 10 per cent. or 40 per cent. I am only asking you whether that plan of reducing worked out the result which you reluctantly wanted to accomplish?

Mr. HARRIOTT: Worked it out in what way?

Mr. WARRINGTON: Took off 20 per cent. of the rate.

Mr. HARRIOTT: It reduced it 20 per cent.

Mr. WARRINGTON: Well, mathematically, that would work it out.

Mr. HARRIOTT: Mathematically it worked it out to reduce the differences?

Mr. WARRINGTON: If you had concluded that it was better to raise that 20 per cent. above third class, you could just as well have accomplished the end by raising as by reducing.

Mr. HARRIOTT: That was the idea I had.

Mr. WARRINGTON: There is nothing peculiar about the third class that would operate—20 per cent. above would operate for each class as well as the third class?

Mr. HARRIOTT: But it would have been better for the railroads.

2144 Mr. WARRINGTON: If they had increased it.

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: I can see that. It would be better for the railroads if they had put 20 per cent. advance on each class?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: That would have been a feasible way to do it, would it not.

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: To what shipments does this commodity rate on starch apply?

Mr. HARRIOTT: I did not catch that.

Mr. MAXWELL: I want to know whether the commodity rate on starch applies to all shipments of starch or whether it applies only to certain classes or between certain points.

Mr. HARRIOTT: It applies, I believe, to every point west of Buffalo, based on per cent. My impression is that when you get down to a 67 or 70 per cent. point, I do not think it applies. I do not think there is any starch manufactured in that territory that is affected.

Mr. MAXWELL: Well, between New York and Syracuse—for instance——

Mr. HARRIOTT: The eastbound common-*yt* date does not
2145 apply to points eastbound that take 67 per cent.—points of that character. It does not apply to Buffalo or Pittsburg. I do not think any commodity rate is in effect between here and Syracuse.

Mr. WARRINGTON: Are you speaking of eastbound or westbound?

Mr. HARRIOTT: I am speaking of both.

Mr. MAXWELL: And westbound starch commodity rates apply where?

Mr. HARRIOTT: They apply west of Buffalo.

Mr. MAXWELL: Does it apply to points east of Buffalo or to Buffalo?

Mr. HARRIOTT: I do not think it applies to Buffalo.

Mr. MAXWELL: Well, between local points what charge is made for starch?

Mr. HARRIOTT: The regular classification charge, fifth class.

Mr. MAXWELL: Does anything else get commodity rates on starch except through competitive traffic?

Mr. HARRIOTT: That is the understanding I have.

Mr. MAXWELL: What class is tallow in.

Mr. HARRIOTT: Tallow is fifth class.

Mr. MAXWELL: Have you sufficient observation of the
2146 commerce of this country to tell us whether soap is the only article of manufacture of commerce in which there is competition.

Mr. HARRIOTT: I think there are so many articles in competition, all you would have to do is to look at our requests for reductions on that account and you would think everything was in competition.

Mr. MAXWELL: Why was that 20 per cent. reduction on third class in less than carload lots made?

Mr. HARRIOTT: Well, it was made because of the pressure of the various manufacturers and the jobbing grocers and the various people who came here and dinned into us that it would simply ruin the business, that it was a burden on the small shop keeper that could only order in small quantities against the jobber who could order in large quantities—it was killing the country storekeeper, and I do not know what all. We were told by jobbers in Chicago that we would not have but one store left in a country town of 2500 people unless we re-uced this advance we made on less than carloads.

Mr. MAXWELL: Did it have anything to do with restoring the former relation of less than carload lots to carload lots?

2147 Mr. HARRIOTT: Somewhat, in so far as the reduction went.

Mr. MAXWELL: Well, I think that was gone into before, but I am not sure.

The CHAIRMAN: My recollection is that it has been testified that that was its principal purpose, to preserve the relation between carloads and less than carload rates on this article. I did not know but what you wanted to show the fact differently.

Mr. MAXWELL: No, your honor. Now, Mr. Harriott, Mr. Warrington has asked you whether as a mathematical proposition you

could just as well increase all rates 20 per cent. on all classes. Is that practicable.

Mr. HARRIOTT: No, I do not think it is practicable. It can be done but I do not think it is practicable.

Mr. MAXWELL: What do you mean by "it can be done."

Mr. HARRIOTT: You can force it. But how long would it last? It is not right that you should increase every class that is now satisfactory.

The CHAIRMAN: You could have increased all rates 20 per cent. without changing the classification of any article? You had the power to do so?

Mr. HARRIOTT: It would not have been proper. We were
2148 asked to do that. We were asked to take first class all the way down and put it up five or six cents a hundred by a lot of people. They thought that was the remedy. I think one proposition was ten cents advance on first and one cent on sixth. There is a great deal of traffic to-day that pays a fair and just rate in the upper classes that did not need any advance, and we did not think that was a proper thing.

Mr. MAXWELL: What I want to know particularly is whether the feasibility, justice and practicability of getting more revenue in that method was presented, discussed, considered and rejected?

Mr. HARRIOTT: Yes, sir.

Mr. WARRINGTON: Now, as to these rates on starch. You know there is a commodity rate on starch from here to Pittsburg, do you not?

Mr. HARRIOTT: From here to Pittsburg?

Mr. WARRINGTON: Yes, sir.

Mr. HARRIOTT: I do not think there is.

Mr. WARRINGTON: You do not know that?

Mr. HARRIOTT: I do not. I did not know but the commodity rate was west of the trunk line termini.

Mr. WARRINGTON: Take Cincinnati to Cleveland to Chicago and to St. Louis—I mean Cincinnati as the base each time—
2149 do you not know that there are commodity rates on starch.

Mr. HARRIOTT: No, sir; I did not know anything about that.

Mr. WARRINGTON: Do you not know there is a commodity rate on starch from Cincinnati to Pittsburg.

Mr. HARRIOTT: I do not know that.

Mr. WARRINGTON: Then you simply have not knowledge of that.

Mr. HARRIOTT: I have not knowledge of that local condition there.

Mr. WARRINGTON: You were not denying those things?

Mr. HARRIOTT: I am not denying them; no, sir.

Mr. WARRINGTON: That is all.

The CHAIRMAN: Mr. Harriott, this was the situation: Soap and many other articles had been in the sixth class for some years. It had been decided more or less definitely that increased revenue should be secured from changes in the classification. Now, how did it happen that your committee agreed to advance soap from six to fifth

class without any consideration of soap, any discussion as to whether you should do it or not?

Mr. HARRIOTT: Well, Mr. Commissioner——

2150 The CHAIRMAN: It just occurs to me that you would have recognized that as an article of considerable consumption, made in different places. I infer that you agreed right off to advance soap without discussing the question.

Mr. HARRIOTT: I said there was no particular discussion on soap. We made up our minds that we had gotten from time to time a great many articles in sixth class that did not belong there. When we started to take out the articles that we did not think belonged in sixth class, sugar, coffee and soap and starch were in that class. We gave no more consideration to soap than we did to sugar and coffee. We said these articles have gotten down too low.

The CHAIRMAN: Primarily, then, it was not a question of selecting from sixth class articles those which would permit of an advance to fifth class, but there were certain articles of large consumption which from a traffic standpoint had been recognized as being improperly put in sixth class.

Mr. HARRIOTT: Yes, sir; and it needed very little discussion to see that there is where we ought to put the advance.

Mr. COLSTON: By absence of discussion you mean absence of doubt as to what was right?

Mr. HARRIOTT: Certainly; we had no doubt as to what was right.

2151 Mr. WARRINGTON: What you have said about this you mean to apply to carload lots and less than carload lots?

Mr. HARRIOTT: When I was discussing that, I was discussing simply the carloads.

Mr. WARRINGTON: Was the same thing true as to less than carloads.

Mr. HARRIOTT: Very nearly the same thing was true of less than carloads.

Mr. WARRINGTON: That is all.

There being no further questions the witness was excused.

Mr. MAXWELL: If your honors please, we do not propose to offer any more testimony on the invitation your honors have extended.

The CHAIRMAN: Then, the case is with you, Mr. Warrington.

Mr. WARRINGTON: Well, your honors, we have no witnesses present. We shall be diligent now in getting out testimony ready in this regard. I do not know where you would like to hear it.

Com'r YEOMANS: Where would you like to have it heard.

2152 Mr. WARRINGTON: I think I would like it at Cincinnati better than any other place.

The CHAIRMAN: Well, generally speaking, this is the situation: the complainants made their case; now the defendants have presented their case and you will take it up for rebuttal.

Mr. WARRINGTON: Yes, sir.

The CHAIRMAN: You are not prepared to say now when you would like to do that?

Mr. WARRINGTON: I cannot say now.

The CHAIRMAN: Can y-u give us some idea?

Mr. WARRINGTON: We were talking to-day and we hope to start Tuesday or Wednesday of next week. I do not know exactly, but we will let you know.

The CHAIRMAN: Well, if no Commissioner can attend at the time and place when you desire to take it, you can take it before some other officer.

Mr. WARRINGTON: Will it be agreeable to you for Mr. McAuliffe to come to Cincinnati?

The CHAIRMAN: Yes, sir; Mr. McAuliffe can attend. It is probable that some member of the Commission will attend. I doubt if I shall be able to. We will adjourn this hearing.

At 4 o'clock p. m. the commission adjourned.

2153 And afterwards, to-wit: but on the same day came the Complainant by its Solicitor, and filed in the Clerk's Office of the Court aforesaid a Report & Opinion of the Commission, in the case of Procter & Gamble Company *vs.* The Cincinnati, Hamilton & Dayton Railway Company, *et al*, in this cause, which Report & Opinion, is clothed in the same words and figures as Exhibits H. and I. to the petition filed herein. See pages 69 *et seq.* of this transcript.

2154 And afterwards, to-wit: but on the same day, came the Complainant by its Solicitor, and filed in the Clerk's Office of the Court aforesaid in this cause, True Copies of the Original petition of the Interstate Commerce Com-ission filed in this cause, and of the Exhibits attached thereto.

2155 And afterwards, to wit: on the 10th. day of November A. D. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, on their behalf in this cause, the Testimony of William A. Procter, in the case of The Procter & Gamble Co. *vs.* The C. H. & D. Ry. Co. *et al.*, which Testimony is clothed in the words and figures following to-wit:

Deposition of witness taken before me, Ben B. Nelson, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the defendants in an action pending before the Interstate Commerce Commission, wherein The Procter & Gamble Company are plaintiffs and The Cincinnati, Hamilton & Dayton Railway Company *et al.* are defendants.

Mr. John W. Warrington and Mr. Mortimer Matthews present on behalf of the plaintiff.

Mr. Edward Colston present on behalf of the B. & O. S. W. R. R. Co.

Mr. Lawrence Maxwell, Jr., present on behalf of the C. H. & D. Ry. Co., the P. C. C. & St. L. Ry. Co., the P. R. R. Co., the L. S. & M. S. Ry. Co., the C. C. C. & St. L. Ry. Co., and the N. Y. Central R. R. Co.

2156 WILLIAM A. PROCTER, being first duly sworn, deposes as follows:

Direct examination by Mr. MAXWELL:

Q. Are you the president of The Procter & Gamble Company?
A. I am.
Q. When was that company organized?
A. In July, 1890.
Q. It was organized, as I understand, to acquire, and did acquire the plant of the firm of Procter & Gamble?
A. Yes.
Q. And you were a member of the firm of Procter & Gamble?
A. Yes, I was.
Q. How long had you been a member of that firm?
A. At that time?
Q. Yes?
A. Thirty-two years.
Q. And you have been the president of the company since its organization?
A. Yes, since its organization.
Q. What is the capital stock of the company?
A. Four million, five hundred thousand dollars.

Mr. WARRINGTON: I wish to put in formal objections to these questions, and object to last question.

Q. How much is preferred and how much is common?
A. Equally divided; $2,225,000, preferred and $2,225,000. common.
2157 Q. What dividend does the preferred stock pay?

Question objected to.

A. Eight per cent.
Q. What dividend does the common stock pay?
A. It has varied from the start.
Q. What was the variation?
A. Six per cent. the first year.
Q. And subsequent years?
A. I don't recollect the number of years.
Q. Twelve per cent. after the first?
A. After the first; I don't recollect when we commenced paying twenty, probably four years ago.
Q. The last four years you have paid twenty per cent. on the common stock?
A. Three or four years—I don't remember, probably been three years.
Q. What surplus have you in addition to the dividends you have paid?

Objected to as irelevant.

A. That is a matter I don't feel called upon to answer.
Q. Have you a surplus?

A. We have on the books.

Q. Are you willing to indicate anything with reference to the amount of that surplus?

A. I am not.

Q. You don't mean that you don't know, but that you are not willing?

2158 A. I don't know.

Q. Is it as much as one million?

A. I should judge it was about one million.

Q. Does your company do any other business than the soap business?

A. Oh yes.

Q. What other business?

A. Glycerine, candles, stearic acid, cotton-seed oil, and elaine and red oil.

Q. What proportion of your business is the soap business?

A. I don't know the proportion.

Q. Couldn't you give us an estimate?

A. I could not.

Q. Nine-tenths?

A. Couldn't tell you at all.

Q. Do you mean you cannot tell whether it is more or less than nine-tenths?

A. I cannot tell what the proportion is.

Q. It is by far the larger proportion?

A. I could not say that.

Q. You mean you don't know whether it is the larger proportion?

A. I haven't thought of it—I couldn't tell you—yes, I think the soap business would be the larger part.

Q. Are you not able to say whether it is as much as three-fourths or more of your business?

A. I couldn't say that, no.

2159 Q. Are you a director in the Ivorydale & Millcreek Valley Railway Company?

A. I am.

Q. Who owns the stock of that company?

A. I do not know.

Q. Are any dividends paid on that stock?

A. I cannot answer that.

Q. Who are the officers of the company?

A. John M. McDonald is the president. I don't know who is the secretary and treasurer, unless it is—it is probably down there in that book (pointing to Poor's Manual of Railroads for 1899). I pay no attention to it at all.

Q. Is that a department of The Procter & Gamble Company?

A. I don't think it is.

Q. Well, I will ask you whether all of the directors and officers of the Railway Company are not directors or officers of The Procter & Gamble Company?

A. No, they are not.

Q. Are they employés of The Procter & Gamble Company?

A. I am not an employe of The Procter & Gamble Company. I receive no salary.

Q. Do you receive any salary as director of The Ivorydale & Millcreek Valley Railway Company?

A. I do not.

Q. Let me ask you whether the directors of the Ivorydale & Millcreek Valley Railway Company are these: Wm. C. Procter, J. H. French, Harry W. Brown and John M. McDonald?

2160 A. I have no memory at all of who they are.

Q. Is William C. Procter connected with The Procter & Gamble Company, and if so, in what capacity?

A. General Manager.

Q. And a director?

A. Yes.

Q. And he is your son?

A. Yes, sir.

Q. What relation does J. H. French sustain to The Procter & Gamble Company?

A. He is bookkeeper and treasurer.

Q. What relation does Harry W. Brown sustain to The Procter & Gamble Company?

A. Employé, and in charge of the advertising department.

Q. What relation does John M. McDonald sustain to The Procter & Gamble Company?

A. He is an employé.

Q. Does William C. Procter own any stock in the Ivorydale & Millcreek Valley Railway Company?

A. I don't know.

Q. Does J. H. French?

A. I don't know.

Q. Does Harry W. Brown?

A. I don't know.

Q. Does John M. McDonald?

A. I don't know.

Q. What interest has The Procter & Gamble Company in this railway company?

2161 A. I don't know. They are—I had better not answer. I don't really know what it is.

Q. Did you ever receive any dividends on account of your stock in the Ivorydale & Millcreek Valley Railway Company?

A. I didn't say that I ever owned any stock.

Q. Do you own any stock in that company?

A. I don't know that I do.

Q. Can't you tell us who does own the stock?

A. I don't know the formation of that company at all. I know nothing at all about it. I paid no attention to it.

Q. Do the directors ever have a meeting?

A. About once a year.

Q. And where do they meet?

A. At Procter & Gamble's office.

Q. Is there anybody interested in that railway except The Procter & Gamble Company?

A. I don't know.
Q. Do you know of anybody else that is?
A. I didn't say that. I said I don't know.
Q. Do you know whether that Railway Company makes any earnings?
A. It certainly must make earnings.
Q. And what do they do with them?
A. I suppose they pay rent.
Q. To whom?
A. I don't know, unless to The Procter & Gamble Company.
Q. Do you know whether they do pay rent to The Procter & Gamble Company?
2162 A. I don't know that they do. I don't attend to those details at all.
Q. Then you mean to say that you don't know anything at all about the affairs and operation of this railway company?
A. I do not.
Q. I hand you a paper that is marked a "prospectus," and appears to be a prospectus that was issued in 1890, at the time The Procter & Gamble Company was organized, soliciting subscriptions to its stock; do you recognize it?
A. Yes.
Q. I call your attention in that prospectus to this statement concerning The Procter & Gamble Company: "All shipments are made direct by railway, the company owning their own switch engines and some four miles of railway tracks, and no cartage is required on the premises." To what railway does that refer?
A. I think that refers to our railway that we had at that time.
Q. Is that the same railway that is owned by the Ivorydale & Millcreek Valley Railway Company?
A. It was not the same. It was but a small line of tracks in there at that time. Since it has been changed into the Ivorydale & Millcreek Valley Railway. It did belong to The Procter & Gamble Company at the time of the issuance of this prospectus.
Q. Then it is the same railway, having been increased and extended?
2163 A. Yes, on the same ground.
Q. And at the time the company was organized the railway belonged to the company then? I mean The Procter & Gamble Company?
A. Yes.
Q. This prospectus states that there was some four miles of railway tracks at that time. How many miles of railway tracks are there now?
A. I don't know.
Q. Are there now more than four miles of railway track?
A. I should judge there would be.
Q. Do you know?
A. I don't know of my own knowledge, but I should say there was.
Q. How many miles?
A. I don't know.

Q. Are there six miles now?
A. I don't know.
Q. Are there five miles?
A. I don't know.
Q. Are there seven miles?
A. I don't know.
Q. Why do you think there is more now than there was then?
A. More buildings put up since that time that are reached by the tracks.

Mr. COLSTON:

Q. That is the only difference then?
A. Yes.

2164 Q. The prospectus to which I refer states that The Procter & Gamble Company own their own switch engines. How many switch engines did they own?
A. One.
Q. How many do they own now?
A. I think two.
Q. Does The Ivorydale & Millcreek Valley Railway Company own the one switch engine which The Procter & Gamble Company owned?
A. I don't know who owns it now.
Q. Do you mean to say that you don't know who owns those switch engines?
A. I don't know.
Q. Does The Procter & Gamble Company own them?
A. I don't know.
Q. Does the Ivorydale & Millcreek Valley Railway Company own them?
A. I don't know.
Q. Who would be likely to know?
A. The president of the company.
Q. But you are the president of The Procter & Gamble Company, and you tell us that you can't tell whether your company owns these engines?
A. I am not such an active president as all that.
Q. Are you sure that there are two engines?
A. I have seen two engines as I passed by.

2165 Q. There was only one at the time The Procter & Gamble Company was organized?
A. Only one.
Q. Then this statement in the prospectus that they owned their own switch engines was an error?
A. Error or false, whichever you please.
Q. Do you know whether The Procter & Gamble Company at any time subsequently acquired another switch engine?
A. I don't know. I saw two engines. I don't know who they belong to or how they were acquired.
Q. Was the prospectus which I have shown to you, which states that The Procter & Gamble Company owned their own switch en-

gines, issued for the purpose of securing public subscriptions to the stock of the company?

Question objected to as being irrelevant and impertinent.

A. It was.
Q. How much stock was subscribed at that time?

Objected to as irrelevant.

A. I have forgotten.
Q. The entire capital stock was taken, was it not?
A. Well, you see some of it went to the vendors.
Q. You mean by that the firm of Procter & Gamble?
A. Yes.
Q. How much did the firm of Procter & Gamble take?
A. In one slice they took one million.
Q. And was the rest of this stock subscribed by the public?
A. Not altogether.
2166 Q. How much?
A. I couldn't tell you.
Q. Can't you come somewhere near telling us, Mr. Procter?
A. I could not.
Q. Can't you come within one million of telling us?
A. I could not.
Q. Within two millions of telling us how much of this stock was subscribed for and taken by the public?
A. I think it was about half of the whole amount. My memory is not clear on that. I know it was largely taken by the Procter & Gamble firm. I should say more than half taken by the firm.

Mr. COLSTON:

Q. And the rest was taken by the public?
A. By the public.
Q. At par?
A. At par.
Q. What amount of traffic does the Ivorydale & Millcreek Valley Railway Co. carry per annum?
A. I don't know.
Q. Does it own any cars?
A. Yes.
Q. How many?
A. I don't know.
Q. Where did it get them? Where did it acquire them?
A. It may have found them—I don't know how.
Q. Did it pay anything for them?
A. I don't know.
2167 Q. Has it a treasury?
A. I don't know.
Q. Has it a treasurer?
A. I don't know who the treasurer is if they have one.
Q. Do you know anybody that owns any stock in the Ivorydale & Millcreek Valley Railway Company?

A. I do not; naturally I would say that each director must have a share of stock.
Q. That would make five shares?
A. Yes.
Q. What is the par value of the stock?
A. I don't know.
Q. Can't you give us some estimate?
A. I cannot.
Q. Is it one hundred dollars?
A. I don't know.
Q. Have you any certificate of that stock?
A. I don't know.
Q. Do you know of anybody that has a certificate?
A. I cannot answer that question.
Q. Has the railway company any place at which it carries on any business?
A. I suppose it carries on the railway business.
Q. My question is whether it has any office at which it conducts any business?
A. I don't know of any office.
Q. Does it have any books of account?
A. I don't know.
2168 Q. Did you ever see any?
A. I don't know
Q. Did you ever see any stock book of the company?
A. I don't recollect it.
Q. Did you ever see a certificate of stock of the company?
A. I don't recollect.
Q. Did you ever see a statement of any business done by the company?
A. No annual statement.
Q. Any kind of statement?
A. If I had been told that they handled so many cars in a year, something like that I have seen probably, no other statement.
Q. Did you ever attend a meeting of the board of directors of that company?
A. Attended the election.
Q. Is that the only meeting you ever attended?
A. I think so.
Q. You mean the election of directors?
A. The election of directors.
Q. What meeting for the election of directors did you last attend?
A. Well, I think I attended one since the first of January.
Q. This year?
A. This year.
Q. Who else was present at that meeting besides yourself?
2169 A. I have forgotten who was present.
Q. Who voted any stock at that meeting?
A. I don't know.
Q. Did you vote any stock?
A. I voted *vive voce.*

Q. As a stockholder in the company?
A. As a director; would have to vote as a stockholder if I was a director.
Q. I understood you to say you were not a stockholder.
A. I must be a stockholder to be a director, but I don't know of having any stock.
Q. You voted for the election of directors?
A. Yes.
Q. Who else voted?
A. Whoever was present.
Q. Who else was present?
A. Mr. McDonald was present.
Q. Does he own any stock in that company?
A. I don't know.
Q. Did he vote at that election?
A. I judge so; I don't recollect his voting.
Q. Do you remember anybody else who was at that election except yourself and Mr. McDonald?
A. I don't know.
Q. Where was that meeting held.
A. In the Procter & Gamble office.
Q. In Cincinnati?
A. Yes, in Cincinnati.

2170 Q. Has this railway company any office except as they meet for the election of directors at the office of The Procter & Gamble Company?
A. Not that I know of.

Counsel for respondents cause the Notary to identify the prospectus to which the attention of the witness has been called, by subscribing the date, title of the case and the Notary's name.

Cross-examination by Mr. WARRINGTON:

Q. You spoke of not drawing any salary as president of The Procter & Gamble Company, how long has that continued?
A. Since the formation of the company.
Q. Have you given attention to the details of the corporation at any time during its organization?
A. No, not the details.
Q. Your object has been to shape the general policy of the company, but to devote yourself in no way to any of the details of the company; is that right?
A. That is right.
Q. Mr. Procter you spoke of the dividends. I think at first the dividends on the common stock were at the rate of six per cent. per annum.

2171 A. The first year.
Q. Then they went to twelve per cent?
A. Yes.
Q. Now when you spoke of twenty per cent., I will ask you whether they have paid 20 per cent. more than two years, and

whether the extra eight per cent. was not in the shape of extra dividends?

A. I think it is three years, but I may be wrong, but they have always been the regular six per cent. semi-annual dividends, with two extra dividends.

Mr. COLSTON:

Q. Of four per cent. each?

A. Yes.

Q. How long has that been going on?

A. Time flies so fast, I am afraid to say. I think it is about three years, but it may be only two.

Q. Mr. Procter, what soaps in your company might be grouped under the word "competitive"?

Counsel for respondents object to this, as not being cross-examination. If the plaintiffs wish to take the deposition of Mr. Procter in support of their cause, they must do so.

Mr. WARRINGTON: Question withdrawn for a moment.

Q. What proportion of these dividends, if you know derived from the soap trade, as distinguished from the business that your company is engaged in?

A. I could not answer that.

2172 Q. State whether or not the competitive soaps in which your company deals pay a profit, and if so, how much?

Mr. MAXWELL: Inasmuch as the witness does not appear to have any knowledge of the details of the business, we object to this question, on the ground of incompetency.

A. Well, they pay a varying profit, varying largely through competition each year.

Q. From what sources are the profits of your company derived—from what sources of business?

A. From all our out-put—all our different articles, glycerine, candles, stearic acid, oil, ivory soap and the competitive soaps.

Q. How do the competitive soaps pay a profit?

A. I would say yes, but not a large one.

Q. What is it?

A. From five to eight per cent., I should judge, on the cost of the soap.

Q. Then are the rest of the profits derived from other articles than the competitive soaps?

A. I should say so.

Q. When you say that soap constitutes the larger portion of your business, do you mean that to apply merely to bulk of trade, or to profits?

A. To the bulk of trade.

Q. You mean the volume of business?

A. Well, to the soap business, I should judge that the larger amount of our profits came from the soap business.

2173 Q. Well, do you mean as applying to the competitive soaps, or the ivory soap?

A. Well to both, but the money is made in the ivory soap, not in the competitive soap.

Q. Why is it you do not call the ivory soap a competitive soap?

A. Well, it has by reputation and advertising,—it has got beyond the ordinary competition. The prices never change. The other soaps change in price every short space of time, probably two or three times a year. Ivory soap is like the laws of the Medes and Persians, the price changes not, always been the same price.

Q. You speak of advertising and otherwise introducing the ivory soap, has that been carried on to any great extent?

A. It has.

Q. Has that become a proprietary article?

A. In what sense do you mean proprietary?

Q. Like any of these trade-mark goods?

A. Yes, it has.

Q. How many brands, about, have you that fall within the competitive class that you have mentioned?

A. I don't know. I should say twenty, but I don't know.

Q. Could you give about the proportion of the bulk of the soap business that is within the competitive class of the Procter & Gamble soap trade?

A. Twenty or twenty-five per cent. of the amount of soap we make is ivory soap.

Q. And the other seventy-five to eighty per cent. is within the competitive class?

2174 A. That is what is left.

Q. Mr. Procter, from what source has this surplus come that you spoke of, after paying dividends, was there anything made on competitive soaps which you could carry to surplus, or was that all exhausted in dividends?

Mr. COLSTON: We object as leading and incompetent.

A. The profits from competitive soaps would not have paid our dividends.

Q. It has not been sufficient to pay the dividends?

A. No.

Q. Then the surplus to which your attention was called in direct examination was derived from the glycerine, candles, oil and soap branches?

Objected to as argumentative and leading.

Q. Is that right?

A. That is right.

Q. Do you remember the engine that was used between buildings by the Procter & Gamble firm for moving soap in its cruder state?

A. Oh, yes.

Q. Now was that an engine additional to the regular locomotive that went up on the tracks?

A. Yes, that was an engine that moved a large platform between the houses and carried the soap.

Mr. COLSTON:

Q. It was not a switch engine?

A. No.

Q. It was used for moving articles that would otherwise
2175 have been moved by drays and wagons, was it not?

A. No, not necessarily.

Q. How would you move articles between buildings if you had not used this engine?

Objected to as argumentative and leading.

A. Only moved one class of matter; that is warm soap in frames.

Q. I understand it. But suppose you had not used this engine for that purpose, how would that have been moved? how could it have been moved?

A. I don't see how it could have been moved.

Q. It could have been moved in wagons and drays, could it not?

A. Yes.

Q. What was this engine? describe it.

A. It ran upon four tracks extended between two lines of houses, and the soap in frames was put upon this, and then moved, I suppose Mr. Colston would say switched-down opposite the doors of other houses, and then ran off into those houses.

Q. Now were there switches leading from these tracks into the various houses, or was the soap landed on platforms in front of the houses?

Objected to as leading.

A. It was run off these tracks into the houses.

Q. Was Mr. Maxwell, who examined you, your counsel in getting out that prospectus and getting up that organization?

A. I have forgotten?

2176 Q. Was he not engaged with New York counsel, Alexander & Green, throughout that entire proceeding?

A. Yes, he was.

Redirect examination by Mr. MAXWELL:

—. Mr. Procter, I do not wish to inquire into your private affairs more than to ask you whether you do not own a large amount of stock in The Procter & Gamble Company?

A. I do.

Q. What is the market value of the stock?

Question objected to.

A. The fair market value of preferred 200, and for common 400 to 425.

Motion to rule out answer.

Q. When you answered Mr. Warrington that the profits on soap were from five to eight per cent. on the cost, did that refer to competitive soap?

A. To competitive soap alone.

Q. Can you tell us what the per cent. of profit on the ivory soap is?

A. That is the rest; that is rather a trade secret.

Q. You do not feel at liberty to tell that?

A. No.

Mr. WARRINGTON: Do you mean that ivory soap, with the glycerine and candle business and stearic acid were the rest?

2177 Objected to as leading and suggestive to the witness.

A. I certainly mean that, for in answering before I said that the larger profit was made in the candle and glycerine and oils.

Mr. MAXWELL:

Q. You do not wish to state your per cent. of profit on ivory soap, and I do not wish to inquire into the affairs of your company any further than may be necessary for the legitimate purposes of this case. Can you give us any general statement on the subject?

Objected to as irrelevant.

A. My answer to others is that our competitors say we make two dollars a box on it.

Q. Are there other soap manufacturers who sell soap of the same class as ivory soap?

A. We don't call it the same class. They sell a white soap, an imitation.

Q. Does it float?

A. Some does and some don't.

Q. Is it used for the same purposes as ivory soap?

A. I don't know that.

Q. Is it a fact that the reputation of ivory soap is so firmly established, and that its favor with the public is so great that you are not obliged to yield in price to the competition of other manufacturers?

Objected to as irrelevant.

A. Yes.

Q. You have spoken of the advertising of the ivory soap, what is the method of advertising? in what journals or papers do you advertise ivory soap?

2178 Question objected to as immaterial and irrelevant.

A. In newspapers and magazines and posters.

Q. Is not the advertising largely in magazines?

A. It varies. We take a run sometimes in one and sometimes in the other.

Q. Take the "Century?"

A. Yes, we advertise in the Century.

Q. Is it advertised as a toilet soap?

A. No.

Q. As what kind of a soap is it advertised?

A. As a laundry and bath soap.

Mr. COLSTON:

Q. Don't they have the girl bathing the baby with this soap?

A. Yes, sir, as a pure soap.

Q. It is advertised as a soap that is practically pure, and would be desirable for the bath?

A. Because it floats.

Q. Also because it is pure?

A. Because it is pure.

Q. Is it advertised in the same magazines to reach the same class of purchasers as Pear's soap?

A. I don't attend to the advertising department, I see it in the same magazines where other soaps are advertised,—all classes.

Mr. COLSTON: Where Pear's soap is; it goes along with Pear's soap in the matter of advertising?

A. I have seen them in the same magazine.

2179 Q. Now can you tell us what proportion of the profits of The Procter & Gamble Company is derived from glycerine?

Question objected to.

A. I couldn't do that Mr. Maxwell. That is a matter that I don't attend to.

Q. Can you tell us how much is derived from stearic acid?

A. I cannot.

Q. From oils?

A. I cannot do that either.

Q. From candles?

A. I cannot.

Q. From ivory soap?

A. No, I cannot tell from ivory soap. I have never bothered about ivory soap; I couldn't tell you.

Q. Then you are not able to tell us what proportions of the profits of your business are derived from the departments of your business?

A. I know in our soap business that our competitive business has very small profit. It is so highly competitive, giving away so much; sell five boxes of soap and give away one, and all sorts of gifts, bicycles and everything of that sort, that it makes it a very arduous business to take care of and keep up.

Q. Then I suppose that inasmuch as this department of your business is not profitable——

A. I don't say that——

Q. Or yields such small profit as to be arduous——

2180 A. No, I don't say so small as to be arduous, but it is small profit, and it is hard work to keep up in the competition. The volume of business is very large. The largest part of our business is competitive soap and we have been fifty or sixty years in it.

Q. Now, you are able to tell us something of the proportion which the sales of competitive soap bear to the total sales, can you not give us some idea of the proportion of the profits which the ivory soap bears to your total business, or which your competitive soap bears to your total profits?

Objected to as immaterial and irrelevant.

A. I don't think I could do that very closely. I don't know whether it would be correct for me to say that in regard to our profits we have these different articles and that we have made money on cotton-seed oil and lard outside of our business.

Q. Can you tell us what proportion of profits, what amount of profits?

A. I can't do that, because I don't know enough of the details of that. When I speak of details, I mean that I don't attend to customers or prices. I know the general trend of the business, and whether it is a good time to buy or not, such like as that; but as to the management of the business and the hiring of people, I don't know anything at all about it. But when it comes to a general question,—to invest largely in raw material, or stay out, then I am generally consulted about it.

2181 Q. Are the books of The Procter & Gamble Company kept so as to show the profits derived from each department of its business?

A. I don't think so. I don't know. In my experience of fifty years in business we were never able to do that with any very close accuracy, as the soap business — separate from the candle business, or the glycerine business, because in the glycerine business we buy a great deal, we import a great deal of crude glycerine and buy a great deal from other manufacturers, and in the candle business we sell a great deal of oil to the soap business, and you know the accounts are tried to be kept close, but we cannot, because they intermingle so; but of course we can tell within one per cent., or at least we always think we can. But we have never been able to keep our accounts with the definiteness and closeness and accuracy that we would like to have.

Q. But you do keep your accounts so as to endeavor or undertake to show what the profits of the different departments of the business are?

A. The different accounts are kept of the different departments, but we do not rely upon them when we come to our annual statement, for we know that they are inaccurate, some runs into one in one thing and another.

Q. But your books do show a statement of the profits from each department of the business, do they not?

A. They do in the glycerine business and in the candle business, and in the soap business as a whole.

2182 Q. But in the soap business you do not undertake to keep an account showing the profits of the ivory soap as distinguished from the other soap?

A. No.

Q. And you are not able to tell us what the proportion of the total profits is derived from the soap business?

A. I cannot; but the glycerine business and candle business are kept separate, and the profits are found for those. I don't know how the books are kept, I couldn't tell you. You can imagine just as well as I can how that would be. I know there are different sys-

tems, different accounts, attempted to be kept, but from my own experience I know that it is almost impossible——

Q. I understand you to mean by that, while the books show the profits of the different departments, they are subject to variations?

A. To variations, but I don't think more than one or two per cent.

Recross-examination by Mr. WARRINGTON:

Q. What was it you said of investing in raw materials and making money or profits in that way by subsequently selling them? Describe that?

A. Well, for instance, last year we bought cotton-seed oil, and it advanced one hundred per cent., and it was more profitable to sell it than to make it into soap, and we sold it.

2183 Q. Has that kind of business been a rule in your company?

A. No.

Q. Have you been accustomed to buying materials and selling them if a substantial rise takes place?

A. There has been no rule of that sort. We have been quick to see when the raw material we had was selling for more than we could make out of it.

Q. I don't mean a rule of the directory, but has it been a practice or custom for you and your officers to buy largely in raw materials and wait for rises, so as to save and reduce the cost of raw material to yourself as much as possible?

A. It has not occurred often enough to call it a custom. It has occurred;—buy oil at 20 and sell it at 40.

Q. What have you to say about the condition of the soap business since January of this year? Has it been good or bad?

A. It has been bad.

Q. Has there been anything marked or noticeable? If so, describe what you mean?

A. Well, part of last year there was so much competition that every inducement was made to have people buy, especially retailers, and they sold such large quantities that there has been no chance for soap makers to sell them much since,—have to wait until more comes off the shelves.

Mr. Procter wishes to make a statement about the engine:

In the way of refreshing my memory, I was thinking
2184 we went out to Ivorydale in 1885, and this period you ask me about was in regard to the incorporation of the company in 1890. Now there was a second engine got, but whether it was gotten before or after 1890, I couldn't tell you, but the first engine was pretty well worn; but my impression is it might be after 1890.

2185 And afterwards, but on the same day, to-wit: November 10th, 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, on their behalf in said cause, the Testimony of B. M. De Lamater and Carl Lautz, in the case of The Procter & Gamble Co. *vs.* The C., H. & D. Ry. Co.

et al., which Testimony is clothed in the words and figures following to-wit:

Depositions of witnesses taken before me, Matt. J. Day, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be used as evidence on behalf of the plaintiff in an action pending in the Interstate Commerce Commission, in which The Procter & Gamble Company is plaintiff and The Cincinnati, Hamilton & Dayton Railway Company and others are defendants, Mr. Mortimer Matthews being present on behalf of the plaintiff; S. O. Bayless being present on behalf of the C., C., C. & St. L. Ry. Co., the N. Y. C. & H. R. R. R. Co., and L. S. & M. S. Ry. Co.; R. E. Hamill, Esq., being present on behalf of the B. & O. S. W. R. R. Co.; Lawrence Maxwell being present on behalf of the C., H. & D. Ry. Co., The P., C., C. & St. L. Ry. Co., and the Penna. R. R. Co.

2186 BRADLEY M. DELEMATER, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. State your name, residence and occupation?

A. Bradley M. Delamater; I am Secretary and Treasurer of the Central City Soap Company, Jackson, Michigan.

Q. How long have you been engaged in the soap business?

A. About twenty years.

Q. How long connected with that company?

A. About twenty years.

Q. What kind of soap does that company manufacture?

A. One grade of Laundry Soap.

Q. Please state what that grade is, in a general way?

A. Well, it is what we term a standard grade or brand; about such a grade as Lenox and Star.

Q. Do you know whether the Soap Manufacturers generally in this country, are satisfied with the change of classification of common laundry soap, which was made on or about January 1st, 1900, by the Official Classification Committee of the Railroads?

A. They are not in favor of it; I have talked with perhaps a dozen or fifteen manufacturers and they all seem to feel that
2187 it is a hardship.

Q. Do you know of any action which has been taken by the soap manufacturers upon this subject and when and where?

A. There was a meeting of a number of the leading manufacturers at Buffalo, I think that was in February. I have a minute of it.

Q. What, if any, action did they take in a general way on the subject?

A. There was a resolution passed asking the Committee in charge of transportation to return to the old classification if possible.

Q. Were those resolutions signed and by whom, if you know?

A. They were signed by all the parties present, I believe; I am not sure whether one party present signed them or not, but that party was heartily in favor of the resolution.

Q. And were they transmitted to the Classification Committee; do you know?

A. They were; they were signed by Mr. Jennings.

Q. Mr. Delemater, you may please state what are the grounds for your dissatisfaction with this change in the classification?

A. Well, owing to a strong competition we are unable to advance the price of soap, and it makes one more drop to be added to the trouble; and then there have been two previous advances in freight rates, and here is another in this line, both of which advances

2188 have added cost to the transportation.

Q. When were they?

A. Well, previous to the Interstate Commerce law we were shipping soap at net weight; at that time that price was done away with; then I think it was in April 1896, our rates were advanced without changing the classification, and this makes three advances, all the time the price of soap has been going down, and in many instances, not much of the time, the prices of material has advanced until there is no longer any margin to the manufacturer, it is given to the railroads and other people.

A. Is there not now in force, a competition or kind of competition which has come into the soap trade of late connected with the Packers, if so, state what that is?

A. Yes, sir; that comes in two ways, they have the benefit of freight rates which we do not get; for instance, they can put a few boxes of soap in a car load of beef and get a car load rate on a small amount or a few boxes of soap, the purchasers getting it at a less price; whereas, if we ship a few boxes it must not be at a rate less than car load lots and it makes quite a difference in the expense.

Q. Well, how do the packers come to have soap to ship with their other products?

A. Well, there are three of the large packers in the soap business; they are soap manufacturers.

2189 Q. What effect does this have in raising the classification in less than car load lots of common soap, with reference to your competition with those packers.

A. It is because they have an opportunity to put soap in our territory and it would be hard for us to ship in their territory. Outside of this, they can cover territory which is far reaching, while we are obliged to look for near by trade, if we want any profit in the business; of course, factories cannot live on the near by trade, unless they are situated in a large City and depend entirely upon that City for the business.

Q. Does the size of the factory have something to do with that also?

A. Yes, sir; of course, if you are running a very small factory and can get enough local trade; if you are running a factory of any size, you cannot get business enough to support it in any one community, unless it is a very large City. The present changes favor local shippers, at the same time it appears to work detriment to the

Railway Company, from the fact that Packers usually are in large cities, and a packer can put in a small soap department, using his own tallow and selling his soap in the City, thereby depriving the railroad companies of transportation on his tallow out or in and also transportation out upon his soap; and it has appeared to us that the railroad people were working to a certain extent against their own interest.

2190 Q. What are the prices of your soap as compared with the year 1887?

A. In 1887, we were selling our soap at three dollars and forty five cents per box; to-day we are selling at two dollars and seventy cents a box, to the wholesale trade.

Q. Is that the same soap?

A. Yes, sir.

Q. Do you know whether or not, the prices of the soaps of other makers have been about the same as that, as between the present time and 1887?

A. They are all on the same ratio; they all have to keep along together.

Q. There has been a recent advance in the price of Laundry Soap, has there not?

A. There was an advance on January 13th, of fifteen cents per box.

Q. What does that now make the price?

A. It makes the price now two dollars and seventy cents per box. One item alone is about five cents higher, that is, empty boxes we put the soap in than last year; so you can see that the fifteen cents advance is easily taken care of without going into raw material much.

Q. What is the fact with regard to the cost of the raw material generally?

A. Do you mean now as compared with 1887?

Q. Yes, sir.

A. Tallow stock is about one and a half cents per pound

2191 higher than at that time.

Q. As to the other ingredients, now?

A. Well, alkalies are from twenty five to forty per cent. advanced; even the paper for the wrappers is higher. There is nothing that goes into soap but what is more expensive than a few years ago, and yet the price is less.

Q. You may state whether or not the recent advance of fifteen cents per box, has been commensurate with the increase of the price of raw material?

A. I think I stated that before.

Q. You stated in regard to one element?

A. No; it does not compare at all with the advance in raw material.

Q. Am I right in understanding from your answer, that this recent advance of fifteen cents per box does not cover any part of the advance or addition in rates, owing to the raising of the classification on January 1st, 1900?

A. Do you mean by that, was that advance made to cover rates.

Does that appear in our figures for making the advance, do you mean?

Q. Well, you may answer upon that understanding?

A. No, sir; it does not. Perhaps I can answer that question a little better by referring to——

Mr. BAYLESS: I object to the question as being wholly incompetent, irrelevant and calling upon the witness to draw his conclusion from facts which may be given in his examination.

2192 Mr. HAMILL: I also make the objection that the questions are leading and suggestive.

Mr. MATTHEWS: I will withdraw the question.

Q. You may state whether or not, the recent advance of fifteen cents per box on common soap covers any part of the increased cost of shipment, owing to the recent advance in classification?

A. No, it does not.

Q. You have stated something already about the competition in the soap business; I wish you would now in a general way state the character of that competition.

A. Do you mean from whom it is principally?

Q. You may refer to the number of people in the business, how wide spread their places of manufacture are &c.?

A. Well, the competition has been growing sharper and stronger for years. There are some very large concerns now in the business who were not in the business a few years ago and as the business gets in larger hands the competition is stronger.

Q. In what parts of the country are the principal factories situated?

A. Well, they are from the Atlantic Ocean west; they are all over the country.

Q. How about the competition between the leading brands of twelve ounce goods, as manufactured by the various and different makers?

A. Well, they would naturally come under the head of
2193 what we were just talking about. The competition is growing stronger, people are coming to learn more and more that one good brand of laundry soap will take the place of another, and the matter of price, of five cents a box will influence trade to buy, of several different brands, one in place of another. It has been a matter of note in our factory for the past two or three years that it was growing stronger in that respect all the time. We have tried as far as possible to withdraw our outside trade, confining ourselves to the nearby territory around that one point, as we must save all there was in it, and that means in a business contraction instead of expansion.

Q. What kind of a freight rate is necessary to the soap business, in order to secure a wide distribution of soap from one factory?

A. From one point of the country to another?

Q. Yes, sir.

A. I think the old classification was much more favorable to the general trade than the new classification, of course, the lower rate

of freight, the further we can extend our business. We have for two or three years put a prohibitive price upon goods in the neighborhood of the Missouri River, because the competition has gradually forced the margin of profit so low that we could not reach there except in car load lots, and it is not usual for a small factory to sell in that way, and large concerns could reach it much better
2194 with a lower freight rate.

Q. You may state whether or not, and it may be recapitulation of some things touched upon; but I would like to get you to this point; your opinion as a manufacturer of soap as to whether or not there is a possibility of being able to increase the price of soap so as to absorb this increased transportation cost.

Mr. BAYLESS: We object to the question as immaterial.

Mr. HAMILL: And we object to it on the ground that the witness should state the facts and not conclusions.

A. No, sir.

Q. In one of your answers you touched upon the fact that prior to 1887, you shipped at net weights, will you be kind enough to say a little more fully what you know about that price prior to 1887?

A. Well, so far as our knowledge goes, it was done. It was the habit of all the Railroad Companies to accept soap at the net weight, which made a difference of perhaps ten or twelve per cent.

Q. The difference was the weight of the box?

A. Yes, sir; the weight of a box which would contain seventy five pounds of soap, would require about a ten pound box.

Cross-examination.

By Mr. MAXWELL:

Q. Is your concern a corporation?
2195 A. Yes, sir.

Q. How long has it been organized?

A. It was organized in 1880.

Q. How long has the business been established there?

A. The business was a firm under the same name for about two years previous.

Q. What is the amount of your capital stock?

A. Do you mean simply the amount of capital in the business or the stock.

Q. Take both?

A. The capital stock surplus is one hundred and twenty-five thousand dollars.

Q. What is the capital stock.

A. Twenty-five thousand dollars.

Q. This surplus of one hundred thousand dollars has been accumulated in the business.

A. Yes, sir.

Q. Within what time?

A. Well, for within the last few years.

Q. Please tell me within what time?

A. I should say, within perhaps the middle of the twenty years; taking the close and the early stages of the business there was not any great accumulation.

Q. What dividends have you paid?

A. We have paid ten per cent.

Q. From the beginning?

A. Perhaps I should say ten per cent. upon the capital,
2196 that would be more explicit. I think so but I would not be positive.

Mr. MATTHEWS: I object to the question and the answer as irrelevant and move to rule it out.

Q. Have you paid ten per cent. right along?

A. Well, generally.

Q. Generally ten per cent.?

A. Yes, sir.

Q. Have you paid at times more than ten per cent. dividends?

A. There may have been times.

Q. Well, I would like to know what the fact is?

A. I could not give you the facts, for I have not our books here. I do not carry those facts in my head.

Q. Can you not tell us without your books whether the company has paid dividends in excess of ten per cent., and if so, to what extent?

A. We have at times, but I cannot tell you what amount.

Q. What was the amount of your sales?

A. From two hundred and fifty thousand to three hundred and fifty thousand dollars.

Q. How is your surplus invested?

A. Part of it is our working capital.

Q. In the plant?

A. In the plant, machinery and material.

Q. How many pounds of soap in a box, the price of which you say was formerly three dollars and forty-five cents and now is
2197 two dollars and seventy cents?

A. Seventy-five pounds.

Q. Do you know the general weight of a box of soap?

A. What we call the standard twelve ounce cake, seventy five pounds; of course, almost every manufacturer puts up different brands of different weights and sizes.

Q. Does the weight include the weight of the box or is it the soap?

A. Seventy five pounds of soap.

Q. Has the cost of soap changed by the introduction of new processes of manufacture, if so, how?

A. The introduction of new machinery has had a tendency to lessen the cost, but it has also had a tendency to very largely increase the competition.

Q. To what extent has it lessened the cost?

A. I could not answer that question; it would only be surmise.

Q. Is it your idea that the railroad company should bear the brunt of the soap competition and relieve the manufacturers of soap from the burden?

A. I would be very glad if you people would.

Q. Has it occurred to you, that while the cost of the manufacture of soap has increased, that the cost of carrying it has increased?

A. I would thank you to repeat that question.

Q. I will put it to you this way; has it occurred to you that
2198 while the cost of the raw material and the manufacture of soap has increased, that the cost to the railroad, or the carrying company, by the increase of the prices of equipment and rails has also increased?

A. Yes, sir; it has occurred to me that it has not increased at anything like the proportion in which they have advanced the price of shipping.

Q. Do you know what the increase has been. Are you aware of the fact, for instance, of the increase in the price of iron rails?

A. Yes, sir; I know something about that, in a general way.

Q. Do you not think that the percentage of increase in the cost of rails has increased the cost of carrying?

A. Well, we are not building a soap factory and they are not building a railroad.

Q. Don't you know that the cost of the item of rails has increased in the precentage much in excess of the increased cost or price of carrying the soap?

A. No, sir.

Q. You do not?

A. No, sir; I do not; the price of rails has incraesed, but iron has not increased any more for the railroad company than the price of the iron we have to put in new kettles. We can meet you on the iron question, because that enters into our factories.

Q. Do you know anything about the increased cost of loco-
2199 motives?

A. No, sir; I do not.

Q. Do you know anything about the increase of the cost of car wheels?

A. No, sir.

Q. Well, I understand your position to be as a soap manufacturer, that the railroad companies ought not to increase the price of carrying soap at all. Is that it?

A. A. Well, you have increased upon us three times within the last thirteen years. I have not taken the ground that you should not increase at all.

Q. Then you admit that the railroad companies are entitled at the present time to increase their freight rates?

A. I have nothing to admit on that matter; I do not name the rates for the freight companies.

Q. But you have stated that you object to any change in the classification, and that a resolution was passed at a meeting which you attended, asking railroad companies to restore soap to Sixth Class?

A. Yes, sir.

Q. Does not that mean that you are objecting to any increase in the cost of carrying soap?

A. Yes, sir; at this time.

Q. At this time?

A. Yes, sir; we feel that two advances ought to be satisfactory to the railroad people. I might say, that I do not think that
2200 was general, I think that applied to the Vanderbilt lines.

Q. What are you talking about?

A. Answering your question.

Q. You overheard me asking some of the freight men here, whether there had been an increase in the freight rates in 1896?

A. Yes, sir.

A. And now you say there was not a general increase?

A. I said, if you want me to correct it, that it might not have occurred in all the territory. I know it took place with the Vanderbilt lines, and I do not know how much further it went.

Q. In Michigan only, was it not?

A. No; I think it reached into Ohio and Indiana. I know it made quite a perceptible difference, that was at the time.

Q. Then the increase you had in classification?

A. That was the second; the first was when they shut us off from the net weight.

Q. That was in 1887?

A. Yes, sir.

Q. Was the rate changed in 1890 or 1891 from the Fifth class into the Sixth class?

A. I could not answer that question.

Q. Do you know whether the profits of the other soap manufacturers in the United States has been as handsome as yours have been?

A. Yes, sir; I know something about that.

2201 *A. Yes, sir; I know something about that.*

Q. Perhaps you can give us some information with reference to these particular plaintiffs, Procter & Gamble Company?

A. No, sir; I cannot.

Q. You are not the fortunate owner of any stock?

A. No, sir; unfortunately.

Q. You know the dividend they pay, do you not?

A. I have heard something about it.

Q. Do you not know of your own knowledge, or is it only hearsay?

A. Only hearsay, I am not a stockholder.

Q. Perhaps you can tell us about some other manufacturers, Kirk, Fairbanks & Co.; have they been profitable investments?

A. Well, I can give you hearsay knowledge in that case; if that is what you want; I can give you simply hearsay knowledge.

Q. No, we are not entitled to ask for hearsay knowledge?

A. Very well, then, I can't.

Cross-examination.

My Mr. BAYLESS:

Q. You referred to some beef packers manufacturing soap?

A. Yes, sir.

Q. And that they had the opportunity of shipping boxes
2202 of soap along with beef?

A. Yes, sir.

Q. Is that not a direct violation of classification?

A. I do not know, sir. I do not know as they shipped upon the same classification, but they got the benefit of car load rates by dividing the car.

Q. Now, you say, you have been trying to confine the business of your manufactory to local points, been contracting rather than extending your territory.

A. Yes, sir.

Q. How long have you been making the effort to contract territory, or rather not endeavoring to extend your business, but confining it to the local territory of your factory?

A. Oh, for the past two or three years; as competition has grown stronger and the margins weaker.

Q. You stated in your direct examination, that was on account of competition?

A. Yes, sir.

Q. You did not contract your business owing to any increase in rates or classifications?

A. No, sir.

Q. The classification was not spoken of at the time?

A. A. Yes, sir.

Q. But your action in that respect was solely on account of competition?

2203 A. Yes, sir.

Q. Now, you say that a classification has a tendency to increase the rate and that with a lower classification and a lower rate practically, you could ship to more distant territory?

A. Yes, sir.

Q. Would not your competitors have the same advantage of the lower classification or lower rate?

A. Yes, sir.

Q. And would not competition be just as strong. What advantage would that give you over any other manufacturer, or one manufacturer over another?

A. I have never asked for an advantage over other manufacturers.

Q. Well, would it give you an advantage over any one manufacturer, or any one manufacturer over another manufacturer. Would not they all be upon a par?

A. Yes, sir.

Q. Therefore, so far as competition is concerned it is not affected by a classification of rates if it is done?

A. Yes, sir; it is.

Q. Will you explain how?

A. Yes, sir; because the price is now made upon soap, and it is impossible to advance it; it is easy enough to advance the price of shipping.

Q. Have you not advanced the price of soap twice within the last six months?

A. No, sir.

2204 Q. Have not the Procter & Gamble Company, the Kirk's, and the Fairbank's advanced prices twice within the last six months?

A. No, sir.
Q. One in September and another in January?
A. They have not.
Q. When was the last advance?
A. January 13th.
Q. What was your advance at that time?
A. Fifteen cents per box.
Q. Was that advance as much as the advance in your rates made by this classification or more?
A. That advance was more than the rates, but that advance was not in proportion at all to the advance in material. It would not affect the rates in any way, it was so small in proportion.

Cross-examination.

By Mr. HAMILL:

Q. You say that there was an advance of fifte cents in January? per box?
A. Yes, sir.
Q. Was that a general advance?
A. Do you want I should testify upon the general advance all over the country?
Q. Yes, sir.
A. It was a certain section of co- was in our territory?
2205 Q. Was it an advance in the territory covered by this Central Traffic Asosciation?
A. Yes, sir.
Q. Who was it made by?
A. I can't state all the parties.
Q. Was it made by all the companies engaged in the soap business?
A. It is my opinion that it was.
Q. It was general then?
A. General in this territory.
Q. They did not consult anybody else in making that advance except their own business interest?
A. I suppose not.
Q. It was done to meet the advance on the price of raw products from a business standpoint?
A. Yes, sir.
Q. And made general this year?
A. Yes, sir.
A. And you say that advance was not sufficient to cover the necessities of the case?
A. No, sir; it was not.
Q. Why did you not cover the necessities?
A. Because competition was so strong it was utterly impracticable.
Q. What limitations were imposed upon them to prevent it being made to cover the necessities of the case?
A. I cannot speak for the others.

Q. It was a general arrangement, was it not?
2206 A. No, sir.
Q. It was not?
A. No, sir.
Q. I thought you testified before that it was a general advance?
A. It was a general advance, but not a general arrangement.
Q. Was it agreed to by all the manufacturers?
A. There was no agreement.
Q. But they all put up their prices?
A. Within a short time of each other.
Q. I will ask you why, if the interests of the business demanded that there should be an advance further than that to cover the additional cost of the increased price of the raw material, the increased price of boxing, the increased cost of tallow, the increased cost of alkali and the increase in the cost of transportation, what it is or was there in the soap business that did not permit it to meet this increase by further advances?
A. Competition.
Q. Competition is the one thing?
A. Yes, sir.
Q. That is all?
A. Yes, sir.
Q. And that is between the soap manufacturers themselves?
A. Soap manufacturers or packers.
2207 Q. The men engaged in the pursuit themselves, is that it?
A. Yes, sir.
Q. Then, so far as they are concerned, if they sell for less than the actual values or cost, it is a purely voluntary business of their own?
A. Purely voluntary.
Q. Did I understand you to answer a while ago, that this advance of fifteen cents a box in January, was not intended to cover the increased cost of transportation?
A. It was not. It was merely an advance to endeavor to cover the deficiency that was brought about in the cost of the raw material; there was no specific item to be covered.
Q. Please explain how you know what the items were entering into this advance of fifteen cents per box, if you say there was no general arrangement by which the advance was made?
A. Some of our larger competitors advanced the price fifteen cents and we kept up with them. Taking it together they were to meet what appeared to be the necessities of the case.
Q. So that in fact the larger manufacturers then advanced the price?
A. That was the stronger competition.
Q. Do you know of a stronger concern in this country than the Procter & Gamble Co.?
A. I know of worse competition.
2208 Q. Do you know a stronger concern?
A. Why, there is no stronger concern in the soap business.

Q. The Procter & Gamble Company, on your testimony, are really the persons that fixed the price?

A. No, sir.

Q. How do you explain it, that the large manufacturers do not determine the price; I understood you to say so?

A. I said the larger, I did not say the largest.

Q. I would like to know who are the concerns that determine the price of soap?

A. It is the wealthy packers to-day, that are the disturbing element and they are gutting into the soap prices.

Q. Please give me the names of some of them?

A. Armour & Co.; Swift & Co., and Cudahy & Co.

Q. Do you mean to say that those packers are stronger in the question of fixing the price upon soap than The Procter & Gamble Company, and other companies in a similar character of that business?

A. In my judgment they are to-day.

Q. Will you please state who it was that initiated this advance of fifteen cents a box in January?

A. Without answering the question I would say, that it would be very hard to say that, some advanced twenty five and some fifteen, some advanced and had to fall back a portion of it.

2209 Q. Can you answer my question?

A. No; I can't.

Q. I would like to know what concern it was that advanced that rate of fifteen cents in January, about the 13th; the first one that came to your knowledge that made that advance in the rate?

A. I could not say from my knowledge, but it is my judgment that Lotze & Bros., Buffalo, and N. K. Fairbanks about the same time; the Detroit Soap Company about the same time. Those were put in at the same time, is my recollection.

Q. Do you know whether any meeting was held in which this question of price was discussed?

A. There was none to my knowledge.

Q. Now, you spoke a while ago about having contracted your business for the last four or five years?

A. Not contracted our business.

Q. Well, contracted the territory in which you conducted it?

A. Yes, sir.

Q. That contraction has been going on how long?

A. Two or three years perhaps.

Q. Had your business been pretty fair, so far as extension of territory was concerned up to the first of January of this year?

A. How is that!

Q. You began your contraction of your territory in which you done business two or three years ago?

A. Yes, sir.

2210 Q. Did you keep contracting it right along?

A. Well, not to any very great extent.

Q. Had you accomplished much in that line up to the first of January of this year?

A. Not very much.
Q. Had you to some extent?
A. To a certain extent.
Q. That was the logic of the situation anyhow, was it not, on account of competition, the increase of sharper competition, and you thought a plan such as this would necessarily develop other trade near at home that would be a better trade and more profitable. Is that true?
A. Yes, sir; partially.
Q. Well, it affected your business to some extent in that line?
A. Which do you mean, the change in rates?
Q. No; but your method of doing business.
A. Not largely; it did some.
Q. Did that affect the amount of shipments, the distance of your shipments over the railroads?
A. Some.
Q. It reduced it?
A. Yes, sir.
Q. Prior to what it was on January 1st?
A. Yes, sir.
Q. Then the railroads were not getting so much revenue?
2211 A. I cannot speak for the other manufacturers.
Q. I mean in long hauls?
A. Well, if I could answer that I should say, that more goods go out, but the maximum distance is not so much.
Q. You are not doing as much business then at an extended distance?
A. No, sir.
Q. If you took the same volume of business and the railroad company to get the same amount of tariff or revenue, it would have to increase its rate, would it not?
A. Yes, sir.
Q. That was the condition to some extent in your business on January 1st of this year?
A. To a very slight extent.
Q. Now, you spoke about the increase of rates. The first increase you spoke of of rates where it was the change of system from net to gross weights; that is to say, railroad companies formerly charged for only seventy five pounds when they carried eighty five pounds.
A. Yes, sir.
Q. I will ask you, in your judgment, is that a natural method of doing business, to carry eighty five pounds and only charge for seventy five?

Mr. MATTHEWS: I object to the question, as irrelevant.

A. It was the practice in 1887.
2212 Q. I was asking you as to the natural method of conducting any business, no matter whether applied to the railroad or not, the handling or carrying of eighty five pounds and accounting for it in tariff, to charge for only seventy five pounds?

Mr. MATTHEWS: The same objection.

A. It is a common occurrence.

Q. I ask you as applying generally to the business, is that a proper or natural method of conducting business?

Mr. MATTHEWS: The same objection.

A. I do not think my judgment is good as to what is proper and good business.

Q. I am asking you what is the natural method?

A. There is a great deal of that class of business done to-day, it comes under the head of schemes, I guess.

Q. It comes under the heads of schemes, is not that a legitimate square method?

Mr. MATTHEWS: I object to the question as irrelevant.

A. Well, schemes are now recognized, I believe, as right.

Q. Is that a reasonable method or an ordinary method of transacting business, I want to know whether it is not out of the way of ordinary methods?

A. It is not out of the ordinary methods; it is a very common occurrence.

2213 Q. It would also be a great advantage to soap manufacturers in general, to have the practice observed?

A. Yes, sir.

Q. It would save so much on the cost of buying the box?

A. Yes, sir.

Q. And that would also be true in anything else you might want to dispose of?

A. Yes, sir.

Q. As a matter of fact, the first complaint you make, is not an increase of charge for actual rates as practised, but for a fictitious or theoretical rate?

A. I did not make the complaint.

Q. Well, you complained of the increase of rates, because they charged for gross weights instead of net weight; that is the increase complained of?

A. That was the first.

Q. That is, the railroads put the rate upon the actual business instead of the speculative?

A. Apparently

Q. Now, I will ask you, the class of shipping men interested particularly in car load lots shipped, are the large handlers or shippers of soap, are they not?

A. Why, not necessarily; they are in want of a change, yet really very much interested in it.

Q. In other words, does not the loss relatively of a carload

2214 lot inure to the benefit of the large shipper rather than the general trade?

A. I will answer that question. First, that is a pretty hard question for me to answer. I look at that in a different light from what I did three months' ago. I am getting different ideas upon that subject from what I had. Three months ago I supposed that it did, but

I am not of that opinion now. My opinion is being changed in regard to that and has been for the last few weeks.

Redirect examination:

Q. You were put through a course of examination in regard to the supposed increase in the price of rails, and car wheels and locomotives within the past year, and gave answers more or less to the effect that you supposed that there had been within that some increase. You may state whether or not, that has been the increase, so far as you know, from what those railway supplies were selling at in 1887?

A. I do not know.

Q. You were asked whether the addition of fifteen cents per box on soap was not greater than the recent advance in rates on shipments?

A. Yes, sir.

Q. And replied that it was greater. Would you be kind enough to do a little figuring and make your answer upon that subject.

A. The difference in the price of soap; if I understand
2215 the question?

Q. I mean the percentage of difference?

A. Well, that was not put as a percentage. It was put as an advance if the price of soap was not greater than the cost of transportation of a box of soap, is the way I understand the question.

Q. Well that depends upon the point between which the box of soap is to be transported, does it not?

A. Yes, sir.

Q. Well, then can it be figured out upon any other basis, if a fair answer is given, than upon the percentage of difference?

A. I judge not.

Q. Will you do a little figuring upon the percentage of difference and make your answer upon that?

A. Do you want a per centage of difference of freight rates and the per centage of difference in the price of soap?

Q. Yes, sir; relatively?

A. The percentage in the difference of freight rates was very much larger than the percentage in the advanced price of soap. I do not have to figure upon that.

Q. You were put through a cross examination upon the subject of whether or not the large or larger manufacturers did not fix the price of soap or determine upon the advance; the recent advance of fifteen cents per box——

2216 A. Yes, sir.

Q. And in giving your answers to that cross-examination, did you bear in mind the effect that the small local factory has on the neighborhood more or less immediately surrounding his factory, as to fixing the *the* price within that territory.

A. Well, the local manufacturer, the large manufacturer cannot advance unless a smaller manufacturer will follow him, but from the strong competition in the soap business to-day the smaller manufacturers are glad to follow the larger.

Q. Mr. De Lamater, in conversing with me before your examination this morning, you gave an illustration of some of the facts testified to by you in your examination in chief, in regard to the city of Cleveland?

A. Yes, sir.

Q. Will you be kind enough to give that in illustration. In your examination in chief I omitted to ask that?

A. That came in in connection with the double haul?

Q. Yes, sir.

A. For, instance, Cleveland is not a City of soap manufactories of any size; the City of Cleveland by itself produces a large amount of tallow for shipping, but the present classification would have a tendency to cause the erection of soap manufactories in cities of that size and thereby the railroads would lose the haul in and out
2217 upon the tallow, and also upon the soap which goes there through manufactories in distant cities. It has also a tendency to injure our business, from the fact that we are located in a small City. I have stated that we were trying to withdraw our business into a smaller territory and we are handicapped by the fact that nearly all our goods have to be shipped out, and I might say our material shipped in.

Q. Can you illustrate that as to Cleveland more fully, with reference to your own business; the haul to and from Jackson to Cleveland?

A. We ship soap into Cleveland, we also buy stock in Cleveland and ship back to Jackson; now if this course continues it naturally will encourage the small local factories to engage in the soap business in Cleveland and such cities, because they have a ready market for a certain amount of product, and have the material there, consequently the Railroad Company loses the transportation of the material from there and the soap in return.

Q. Will the retail purchaser in Cleveland be any better off than now in regard to the purchase of soap, in your opinion?

A. No, sir.

Recross examination.

By Mr. HAMILL:

Q. Then in fact the cost of transportation of raw material
2218 to your factory, and the manufactured product back to Cleveland, does not enter into the item at all to the small purchaser of soap?

A. Not to the consumer.

Q. It does not cut any figure to him?

A. No, sir; it is not in evidence, the retail grocer keeps that from him.

Q. It does not make a particle of difference to the consumer as to the cost of transportation to your factory and from Cleveland?

A. No, sir; the retail grocer cuts that out.

Q. Then whether the freight rate is higher or lower, it does not affect the material at all?

A. It affects the manufacturer.
Q. And not the consumer?
A. Yes, sir.
Q. Which would be the most advantageous to the railroad companies, to carry the raw material from Cleveland to your factory and then the finished product back at a rate which would not be productive of sufficient revenue to justify the handling of the business, or to let it take its natural course of being manufactured and sold in Cleveland. Answer that?
A. Well, the doubling of stocks and the payment of dividends upon double stocks might make a difference.
Q. Well, you have doubled your capital five times in your business?
2219 A. Well, we have been many years in doing it.

Thereupon the further taking of testimony was adjourned until 2 o'clock P. M., at this place.

TWO O'CLOCK P. M.

Met pursuant to the above adjournment. Present, Mortimer Matthews, Esq., and John W. Warrington, Esq., on behalf of the plaintiff, and S. O. Bayless, Esq., on behalf of the C. C. C. & St. L., Railroad, the N. Y. C. & H. R. R. Co., and L. S. & M. S., Ry. Co. Lawrence Maxwell, Esq., on behalf of the C. H. & D. Ry. Co., the P. C. C. & St. L. Ry. Co., and the Penna. R. R. Co., and R. E. Hamill, Esq., on behalf of the B. & O. S. W. R. R. Co.

CARL A. LAUTZ, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. Please state your name, residence and occupation.
A. Carl A. Lautz, my residence is Buffalo, New York; a manufacturer of Laundry Soap.
2220 Q. What firm, if any, are you connected with there?
A. Lautz Bros., & Co.
Q. How long has that firm been in business in the manufacture of Laundry Soap at Buffalo?
A. The Concern was originally started in 1853, by my Grandfather, and it has been run under the name of Lautz Bros., & Co., since 1866.
Q. How long have you been connected with the firm as a partner?
A. Since 1894.
Q. How long have you been connected with the firm all together?
A. Since 1885.
Q. In what capacity prior to 1894?
A. Principally in the sales department; that is, I had the correspondence and direction of the salesmen principally.
Q. What connection did you have with the business as well as now.
A. Well, about the same as before 1894, except that I have some duties since my father's death, in the routine of the office.

Q. You may state whether your firm is satisfied with the recent change of classification of the soap freight rate from the Sixth to the Fifth class in carload lots, and from four to twenty per cent less than Third class in less than car-load lots?

2221 Mr. BAYLESS: The defendants object to the question, because it is immaterial whether his firm is satisfied or not with the change in the classification.

A. We are not satisfied.

Q. What is your personal opinion in regard to that?

Mr. BAYLESS: We object to that question as incompetent.

A. My objections are few.

Q. Are they different from those of the firm?

A. No, sir; the same as the firm.

Q. You may now state the grounds of dis-satisfaction if you will?

A. Because of the disturbance of the basis upon which we have been doing business for the last thirteen years; it brings in a new element the advance, practically an advance in the freight rates brings in a new element that must be worked out naturally, and it seems to us that it will work to our disadvantage from previous experience.

Q. There was a recent advance in the price of soap, Mr. Lautz, was there?

A. Slightly.

Q. State what it was and when it went into effect?

A. May I refer to my notes?

Q. Certainly?

A. There was an advance on December 7th, on a few
2222 brands. Do you want the amount of the advance?

Q. Yes; if you please.

A. The amount of the advance ranged from two to ten per cent.

Q. Can you give that in price per box with the weight of the box?

A. Well, on the Acme, take seventy five pounds, there was an advance. With it, these are the comparative prices between 1887 and 1899. No, I have not the figures previous to December 7th, but they ranged from two to eight per cent. advance of the prices immediately previous.

Q. You may state whether or not, this was an advance in the price of your own soap only or other manufacturers also?

A. I refer only to ours.

Q. What do you know about any advance about the same time of other manufacturers?

A. There were some slight advances made a few weeks after we made it, I think we were the first ones at that time. I think sometime about the 1st of January.

Q. What, if any, difference in the price of raw materials which enter into the manufacture of soap has there been within the past year?

A. Well, in December 1898, the price of prime tallow averaged three dollars and sixty cents per hundred pounds; and in December

1899 it averaged five dollars and sixteen cents. Soda ash in
2223 December 1898, about fifty-two and a half cents per hundred pounds and in December 1899 a dollar and three cents per hundred. The price of rosin in December 1898 was two dollars and forty-five cents per barrel, and in December 1899, the average price of the same grade was three dollars and sixty cents per barrel. The price of Cotton Oil was nineteen cents a gallon, and in December 1899 it was thirty cents.

Q. Are those Buffalo prices?

A. Those are prices f. o. b. Buffalo.

Q. You may state whether or not the recent increase in the price of soap was sufficient to cover the increased cost of those materials?

A. It was not.

Q. Mr. Lautz, you may now state, in a general way, giving generally the facts connected with the competition in the soap trade?

A. Well, the soap business is unique in the fact that the little manufacturers, or the smallest ones, and some of the biggest ones are the most disturbing elements. There are some very large concerns, who have large facilities who are great factors in the soap business; and then the very small local concerns are equally disturbing factors—the large ones from the fact that they are obliged to utilize some of the materials which come to them in the nature of bi-products from other branches of business, which distribute goods over a wide range of territory, and the small ones from the fact that they
2224 have no freights to pay, no travelling expenses of salesmen to pay, and it enables them to compete successfully with other factories located at a distance.

Q. What if any effect do the Provision Packers have upon the condition of competition in the soap trade?

A. Well, I suppose you mean those large packers.

Q. Yes, sir; such as Armour and Swift?

A. They have branches for the distribution of meat and packing house products all over the country, and are able to put their soap in with their other goods in a car to fill it up and the customer gets the advantage of the car-load rate in making shipments; whereas, if we want to sell a customer and give him the advantage of a car load rate, we have to sell him a car-load of one kind of soap, while the packer can sell him meat, lard and soap, making in all a car-load.

Q. Do you know anything about their system of depots for the distribution of their products?

A. I simply know that they have them.

Q. Do you know what, if any, effect that has upon their ability to distribute less than car-load lots of soap or mixed car-load lots?

A. Well, I understand, taking these small points where other soap manufacturers can't sell a car-load lot, they put in soap in a car with some other goods and they get the benefit of a car-load rate to that point.

2225 Q. What effect do the railroad rates have upon the wide-spead distribution of soap from one factory. What kind of a rate is necessary for that wide spread distribution from one factory?

A. The higher the rate the smaller the territory in which you can do business with profit.

Q. Why?

A. Because the higher the rate the greater the advantage to the local manufacturer.

Q. Are there some points in the United States beyond which, for this reason your house at Buffalo, cannot sell your product?

A. Well, we cannot go beyond the Mississippi River and compete with factories, for instance that are located here.

Q. *Q.* Are there factories in St. Louis?

A. There are some factories in St. Louis.

Q. How about points in the South?

Mr. HAMILL: I object to the question for the reason that he has stated that the territory is not covered by the competition here.

A. Well in the south we ship principally to distributing points along the Coast; we cannot ship anything by rail below Savannah, with profit.

Q. Is it possible for the soap manufacturers to increase the price of their soap so as to absorb this increase in transportation charge?

A. It has not been so far.

2226 Q. Can you state for what reason that is so?

A. The elements of competition has been so keen it has been impossible to advance the price sufficient to overcome the price of freight rates.

Q. By the competition of what manufacturers, for instance, is it you are unable to increase your price say, in New York City, so as to absorb this increase of transportation?

A. We do not do any particular business in New York City.

Q. Well, can you take some point where you do considerable business and answer the question in reference to that point?

A. Well, take *in* it in the State of Maine, we can not advance the price there on account of the factories in Boston being more advantageously located.

Q. What, if any, connection has the price they fix in Maine upon the price which you fix?

A. We are situated just about as they are.

Q. Mr. Lautz, what, if any, knowledge have you with reference to the charge of the Railroad Companies on net weights on shipments of soap at and prior to the years 1887?

A. As far as our records go, previous to April 15th, 1887, we paid only for net weight on all shipments of goods.

Mr. HAMILL: I object to the answer as improper, the witness testifies from records which should be produced and not from
2227 the knowledge of the witness. I move to strike the answer out.

Q. What is your independent recollection in regard to fact, if any?

Mr. HAMILL: I still object for the reason that the witness has testified that he was not in business at that time.

A. I know that it was sometime during the year 1887 that the change was made.

Q. Over what railroads did this practice exist?

A. All the railroads we shipped on out of Buffalo.

Q. Did you at and prior to that time ship on all the railroads that centered there?

A. Yes, sir; all of them.

Q. Do you know how long that practice had continued up to the year 1887?

A. So far as I know all times previous to that.

Q. How far back does your knowledge run in that particular; what year?

A. To 1885.

Q. At what class were you shipping common soap in car-load lots from January 1st, 1895?

A. Sixth class.

Cross-examination.

By Mr. BAYLESS:

Q. What is the name of your firm?

2228 A. Lautz Bros. & Co.

Q. Is it an Incorporated Company?

A. No, sir.

Q. A private corporation?

A. No, sir; a partnership.

Q. What amount of capital have you invested in your plant?

A. I don't know that it is material.

Q. Well, I ask you the question, it is not for you to say whether it is material or not. It is for the Commission to say whether it is proper.

A. I don't know as I care to answer that question.

Q. Do you decline to answer?

A. I should have to submit the matter to the firm.

Q. Well, the firm are not upon the witness stand. We are entitled to your answer. Do you decline to answer that question.

A. If you care to put it that way.

Q. What do you say to my question.

A. I will not answer it.

Q. Are there any other members of your firm present to testify to-day?

A. No, sir.

Q. Where are they?

A. In Buffalo.

Q. Do you know whether or not they expect to be witnesses in this proceeding or not?

2229 A. I don't know that they do.

Q. How did you happen to come here and testify?

A. I was asked to come here.

Q. Who asked you to come here?

A. The Procter & Gamble Company.

Q. You knew before you come here, that you were requested to come here by the Procter & Gamble Company to testify in this proceeding, didn't you?

A. Yes, sir.

Q. That is your business here to-day, as a witness for the Procter & Gamble Company?

A. Yes, sir.

Q. Have you any other business here?

A. No, sir.

Q. Nothing?

A. No.

Q. You decline to state what amount of capital you have invested in your plant?

A. I told you before.

Q. What has been the profits of your business within the last three or four years, counting the profits of capital invested.

Mr. MATTHEWS: I object to the question as irrevelant.

A. I will answer the question, if you want to know how much profit there was on soap. I can't answer in the way you have asked.

Q. Well, answer in your own way?

2230 A. Well, the range of profit on sales was about three to four and a half per cent.

Q. The profit on sales. Would your sales have been very high for the last three or four years?

A. I have no records here to refer to.

Q. Please approximate the amount of your sales; you have some idea of the amount of your sales each year?

A. I don't see what that has to do.

Q. Well, that is not for you to determine what it has to do with the case. You are here as a witness and it is for the Commission to decide what it has to do.

Mr. MATTHEWS: I object to the question as irrelevant.

A. Well, I decline to reply; it is a partnership, not a corporation.

Q. You decline to answer?

A. I do.

Q. I will ask you whether or not it has been a profitable business within the last three or four years?

A. It has been.

Q. You say you are not satisfied with the classifications made by the Railroad Company?

A. No.

Q. What is your objection to the classification?

A. The soap business or trade we have, has been built up in various localities hitherto; the expenditure of large sums of money advertising against the competition of the people that are

2231 nearer to these markets than we are; the raising of freight rates by the classification makes it in some case, practically impossible for us to compete with the factories that are right on the ground.

Q. In other words, then, a factory located in the City is able to

furnish soap for the people of that community and the surrounding country approximately cheaper than you can ship it from Buffalo to those points at the classified rate? Is that it?

A. Everything else being equal; yes, sir.

Q. Now, you say there has been an advance in the price of soap, or of certain brands of soap, on December 7th, by your firm of two to ten per cent.?

A. Yes, sir.

Q. What caused that advance?

A. The price of material was advancing very rapidly.

Q. That advance was not caused by any increase in freight rates, was it?

A. Not that advance.

Q. The fact is, no change of classification or increase of rate of shipment had occurred at that time?

A. No, sir.

Q. That increase, as I understand you, was occasioned by reason of the advance in the price of raw material over what it had been before?

A. Yes, sir.

Q. The raw material that went into the composition of
2232 your soap?

A. Yes, sir.

Q. What kind of soap does your firm manufacture?

A. Fine Laundry Soap.

Q. At what price do you sell that?

A. Well, the price runs from three to six cents.

Q. What would it average?

A. The bulk would average about four cents.

Q. Four cents a pound?

A. Yes, sir.

Q. In what sized box is soap?

A. Well, usually one hundred cakes, seventy-five pounds in a box.

Q. In what territory have you been selling this soap; what are the limits of the territory?

A. From the Mississippi River to the Atlantic Coast.

Q. I understood you to say in your direct examination, that you did not sell any considerable amount of soap in New York?

A. In New York City.

Q. Explain why you do not sell any there?

A. Because there are several large local factories there.

Q. It is because you have not a low rate that you do not sell there?

A. If we had low rates we could sell there.

2233 Q. In other words, if the railroad shipped your soap for nothing, you could compete with them?

A. I presume we could.

Q. Now, you say, that small and large manufacturers are disturbing elements; you mean by that they are your competitors?

A. Yes, sir.

Q. A small factory will take care of the demand in its immediate locality?

A. Yes, sir.

Q. And a larger manufacturer will take care of the demand in his territory?

A. In a larger territory.

Q. Well, are the railroads in any way responsible for that?

A. The fact that the large Packing Houses are able to put their soap in with their Packing House products, enable them to ship to a great many small points at car-load rates, where there are no buyers who are able to take care of a car-load of soap.

Q. Are there any Packing Houses at Buffalo doing that?

A. No, sir.

Q. Or anywhere else except Chicago and Kansas City?

A. I think one in Omaha.

Q. Well I am speaking of the Central Traffic Association territory; is not Chicago the only point where the Packing Houses handle soap within the Central Traffic Association territory?

2234 A. I think the only one in this territory.

Q. Is there not one in Indianapolis?

A. I don't know.

Q. How can a packer in Chicago interfere with your territory at Buffalo, if he does ship out in carload lots?

A. He may not be able to interfere at Buffalo, but there are other points in the territory where his influence is felt to a greater extent.

Q. What proportion of the soap manufactured and shipped into the teritory, and I am speaking now of the companies east of the Missouri River, is handled by those Packing Houses that you spoke of?

A. I have no idea.

Q. Is it not only a small per cent.?

A. That is pretty difficult to arrive at.

Q. You say that those Packing Houses have depots stationed at distributing points, from which they distribute soap; is not that the fact with every large soap manufacturer who ships in car-load lots?

A. Well, I do not know that soap manufacturers practice that to any extent.

Q. Do not you know that Procter & Gamble have availed themselves of the privilege?

A. I do not know anything about their business.

Q. Now, your shipments south, you may say distribute from points on the coast?

A. Principally.

2235 Q. Well, is it not the fact that shipments of soap south from Buffalo, New York and Boston, go by water and not by rail?

A. They go both ways, part by rail and part by boat.

Q. Well, does not the lower water rate fix the rate by rail to these competing points, between the railroad and water lines?

A. Well, the boat rates are usually the same.

Q. Is there not a very low rate, because of the water rate along the

coast, to points south of the coast from where you distribute your products?

A. I think I made a mistake; I said that the rail rates and the water rates were the same. I have a recollection of only one point at this moment, and think the rail rates are a great deal higher than the water rates.

Q. How do you ship, by water or rail?

A. We ship both ways; we ship over the railroad a part of the way, we cannot ship by all water.

Q. Is not the rate by rail a low rates because of the water rate?

A. I suppose comparatively, speaking of the length of the haul.

Q. How is the price of Laundry soap fixed among manufacturers?

2236 A. Each fellow fixes his own price.

Q. Each one fixes his own price. I will ask you if it is not the fact you have your association?

A. No, sir; we have no association.

Q. Is it not true you had a meeting in your City not long ago?

A. Yes, sir.

Q. There was a meeting of Soap Manufacturers?

A. Yes, sir.

Q. What was the purpose of that meeting?

A. To designate a representative to attend the meeting in New York of this Freight Association.

Q. Who represented you at that meeting?

A. Mr. Jennings.

Q. Of Chicago?

A. Yes, sir.

Q. Do you know as a matter of fact, whether or not he presented the objections you are now making of this classification at that meeting?

A. I have never heard directly that he did; I presume though that he did.

Q. What is the action usually taken by the soap manufacturers when you increase the price of soap?

A. It was always individual action.

Q. No correspondence between the manufacturers in reference to it?

A. There never has been.

Q. Notice given by one manufacturer to another of the

2237 price he makes?

A. No, sir; it has not been customary.

Q. Are the prices of common laundry soap generally uniform, or nearly so, in price?

A. I don't know what you mean.

Q. I mean are the same grades generally uniform?

A. For the same grades they average very nearly alike.

Q. If one large manufacturer of soap increases his price, do the others follow?

A. Sometimes they do; not always.

Q. I believe you stated that you recollected the fact that some

years ago you were shipping soap at net weight. Explain what that is?

A. It is the weight marked on the box not including the box.

Q. It excludes the weight of the box?

A. Yes, sir.

—. Do you know of that being extended to any other shipments, fruit shipped in boxes?

A. I do not know anything about anything except the soap business.

Q. Do you know anything about the shipment of canned goods?

A. No, sir.

Q. Cereals?

A. No, sir.

Q. Do you know, as a matter of fact, that gross weight is
2238 charged upon almost everything else except soap?

A. I am not aware of the fact.

Q. Yet if it be a fact that gross weight is charged upon other products, and only net weight charged upon a shipment of soap, then there has been a preference in favor of the shippers of soap, has there not?

A. Well, you understand me, soap is marked "one hundred cakes, seventy-five pounds," before the box goes out of the factory soap shrinks sometimes half the weight of the box, so that would not be any particular preference. Canned goods will not shrink in weight.

Q. Well, I am speaking now of the boxes and the gross weight. If canned goods, cereals and other products are charged full gross weight, soap prior to 1891, was only charged the net weight, that would be an undue preference, would it not to the shipper of soap?

Mr. MATTHEWS: I object to that as irrelevant.

A. That is a hypothetical question.

Q. No; it is a practical question, nothing hypothetical about it. Just answer it.

A. No; I don't think so.

Q. Then you think owners of goods that might be shipped as net weight, should not be given any preference over owners of other goods shipped in the same class, who had to pay for the box, one being shipped as gross and the other as net weight?

A. Well, you fail to take the shrinkage of soap into con-
2239 sideration.

Q. Well, I am not considering that at all; leave that out of it. The weight, of course, is supposed to apply at the time it is shipped, not when laid in the warehouse and dried out.

A. If your premises are correct there would be an advantage.

Cross examination.

By Mr. HAMILL:

Q. While on the subject of net weights, what is that shrinkage of the soap or the box?

A. Of the soap.

Q. What is the difference in the weight, or what is the shrinkage of the soap?

A. It depends upon how long it has been in the factory.

Q. What weight did you put in the box?

A. Seventy-five pounds.

Q. That is what you sell it for, seventy five pounds?

A. That is what we sell it for.

Q. Yet, when it comes to the customers it does not weigh that. Is that true?

A. Yes, sir. That is understood by the trade.

Q. You sell it for seventy five pounds, whether it weighs it or —, do you?

A. We sell it for seventy five pounds.

2240 Q. And you say by the handling and the evaporation it will not weigh that when it is sold; that is true.

A. That is true.

Q. Although you get paid for it?

A. We get paid for the seventy five pounds.

Q. And it does not amount to that when it gets to the consumer. How much shrinkage on a box that weighs seventy five pounds?

A. I should imagine three or four pounds.

Q. That is in the soap?

A. Yes, sir.

Q. How much does the box shrink in weight?

A. I do not know that the box shrinks any.

Q. Don't think it does. Then if the railroad was going to make this thing exact to you, instead of deducting the weight of the box it ought to deduct shrinkage of the soap instead of the net weight of the box. Is not that true, if you get at the actual honesty of the case?

A. I do not know as I quite understand.

Q. If they are going to make an allowance to you by deduction from gross weight to net weight on account of shrinkage, instead of doing what they did years ago, prior to 1891, allowing net weight of the soap to be seventy five pounds, they should charge you for the carriage of the box and deduct in shrinkage?

2241 A. Well, they have been charging full weight for the box.

Q. Theretofore before 1891?

A. Since that time.

Q. I understand you to complain of a change?

A. I was asked the question.

Q. Was that a reasonable charge to charge you for, or do you think a reasonable method would be to carry your box without charge?

A. Well, it is customary——

Q. I am not asking you about any custom, I am asking you as to the facts?

A. If it is customary to charge for all packages then it should be.

Q. In other words, the weight of the box is what you practically get off.

Q. That is what it happened to be.

Q. Since 1891, this practice has been changed?

A. Well, it was prior to 1891.

Q. As a matter of fact, did you ever see any published tariff or schedule of rates or classification by any railroad that published a rate of that sort, of charging net weights on soap instead of gross weight, or was not that a kind of underhand practice?

A. The rates are usually published for car-load rates and so much per hundred.

Q. Now take it less than car-load lots?

A. Some of them.

2242 Q. Did you ever see a published tariff prior to 1891, as well as subsequent that ever made a deduction of gross weight to net weights?

A. I never saw a tariff that stated either way.

Q. In other words, if any such thing was done, it was *sub rosa?*

A. It was simply general practice.

Q. And not published to the world as a published tariff, was it?

A. I think I have answered that question before.

Q. Well, you say, as I understand you now, that it was a general practice. Now, as a matter of fact, was it not limited to certain points?

A. That I do not know.

Q. So you do not know whether that particular discrimination of net weights over gross weights was general to all points of shipment in this territory or not, prior to 1891?

A. Whether to all manufacturers?

Q. Yes; to get the benefit of that arrangement?

A. Well I cannot speak positively, I am under the impression they were.

Q. That is your impression, but you never saw a published rate of that sort. Have you ever studied the published rates of railroads, tariff rates?

A. I have looked at them.

Q. It has been your business to direct and handle the direction of shipments from your firm during those years?

2243 A. Well we have a shipping clerk that attends to this.

Q. Well, you have had occasion to personally attend to it and know what it was?

A. In a general way.

Q. Have you done so sufficiently to familiarize yourself with the business?

A. So far as it affected our own business.

Q. Now, in doing that and seeing the effect on your business, if any such discrimination was ever practically published in a tariff, you would have notice of it?

A. I suppose my attention would have been called to it by the shipping clerk.

Q. Would not you have found it out, if he had not called attention to it?

A. I suppose I would.

Q. Well, if you ever saw any such thing as a published rate of that character, that you speak of?

A. The net weight?

Q. The net weight.

A. I have told you before that there was nothing in the tariff concerning packages, one way or the other.

Q. Therefore, nothing about that?

A. I have told you I saw nothing in the tariff concerning the charge on boxes, or any charge.

2244 Q. You never saw anything about gross or net weights?

A. No, sir.

Q. Or any thing whereby the carrier was to charge for gross or net weights, or whereby the weight of the box was to be deducted. You never saw anything of that kind?

A. No, sir.

Q. I will ask you now, if you examined those railroad rates that you speak of being published; did you ever examine any of them?

A. I never examined one, except so far as related to soap.

Q. Did you examine it with reference to shipments of soap from your own business?

A. Well, I do not know as I quite understand what you are getting at.

Q. Did you examine the tariff rates with reference to soap further than your own business?

A. If we wanted *wanted* to get a rate to any given point, the shipping clerk would point it out to us.

Q. Is that all you know, what the shipping clerk pointed out to you?

A. Well, I do not know what further there was to know.

Q. Did you make it your business to study those rates, or get them from the shipper.

A. We hired a shipper to do that.

2245 Q. And depended upon his judgment to ascertain the facts?

A. To ascertain what facts.

Q. As to whether the rate was proper or what the rate was and everything in connection with it?

A. We depended upon him.

Q. Did you ascertain for yourself in person, or simply learn it from him?

A. Well, it was a published tariff.

Q. Well, I asked you whether you got it from the published rate yourself or depended upon him?

A. If it was necessary for me to know or examine the rate, I sent to him and asked him and he would show me what the rate was.

Q. Did you ever make any examination yourself?

A. Not further than that.

Q. Did you ever examine to see whether these tariffs expressly stated the other facts with reference to gross or net weights?

A. No, sir.

Q. You never examined them to see?

A. No, sir.

Q. You don't know whether they did or not?
A. No, sir.
Q. In fact you do not know what they did show, you depended upon the shipper for it?
A. Practically.
2246 Q. I understood you to testify a while ago, that from January 1st to the 15th, 1895, soap was classified as Sixth class; is that right?
Mr. MATTHEWS: He said that he shipped Sixth class.
Q. From January 1st to the 15th, 1895?
A. Yes, sir; that is it.
Q. You shipped as Sixth class?
A. Yes, sir.
Q. Do you know what the classification was at that time?
A. No, sir.
Q. Do you know what the published classification was?
A. No, sir.
Q. Do you know whether the Fifth or Sixth?
A. No, sir.
Q. You spoke a while ago—if I understand your factory is located at Buffalo?
A. At Buffalo.
Q. You say, you did not do any considerable business in New York City?
A. Not in New York City.
Q. The reason you did not do any considerable business was because of the number of large concerns there?
A. The number of large and some smaller.
Q. Now, that has been the case for many years back?
2247 A. What do you mean?
Q. How many years back has that been the fact?
A. Oh, they have been there a long time.
Q. Been there all the time you have been at Buffalo?
A. Ever since I have been in the business.
Q. No difference now to what it was before?
A. No, sir.
Q. The same condition exists now that did five or ten years ago as to that?
A. Practically the same.
Q. You spoke a while ago, of not being able to compete for Maine business with the Boston manufacturers, on account of their being closer to the scene of operations; that is to say, closer to the trade; that is the reason was it?
A. Yes, sir.
Q. And that you cannot compete with the Maine territory?
A. Yes, sir.
Q. Your idea is that the railroad companies ought to carry the burden of the business between Buffalo and the east to equalize it?
A. I do not say anything of the kind.
Q. What are you complaining of the railroad companies on account of then?

A. I said that the higher the freight rates, the more limited the territory in which we could ship.

2248 Q. The freight rates must necessarily be higher the longer the distance of haul, must they not?

A. Certainly.

Q. Could there be any arrangement, or equalization of rates that would give you the same rates from Buffalo to Maine points as from Boston to Maine points?

A. No, sir; but the recent change makes the advantages greater than it was before, makes it more difficult to compete than before.

Q. Did you do any extensive business in Maine prior to this classification?

A. We have.

Q. And that has been cut off on account of this classification?

A. I did not say so.

Q. What is the real reason why it has been cut off?

A. I did not say it had been cut off.

Q. Has it or has it not?

A. It has not.

Q. All right. You spoke a while ago of not being able to compete with rivals to the Mississippi River; rivals here, because of manufacturers located at Cincinnati, you could not compete from Buffalo, is that true or not?

A. I said we could not compete beyond the Mississippi River.

2249 Q. Well, you spoke about not being able to compete, if I understood you, with factories located here at Cincinnati, with Mississippi points?

A. Beyond the Mississippi.

Q. Beyond the Mississippi. Now, as a matter of fact, this classification in controversy does not extend beyond the Mississippi River at all, does it?

A. I think it extends as far as the Missouri. Does it not take in Iowa?

Q. You understand that it does take in Iowa?

A. No, I do not, as we have no interest in Iowa and pay no attention to it.

Q. Now, so far as this classfication is concerned to points on the Mississippi River, you can compete with Cincinnati Manufacturers from Buffalo?

A. It is more difficult to compete now than before.

Q. Why is that the case?

A. Because we are paying higher freight rates.

Q. Then The Procter & Gamble Company would get the benefit of this classification, whereby you are cut out?

A. I do not know what the freight rates are from here.

Q. Well, I understood you to complain as a shipper from Buffalo, from your experience of this new classification, you are less able to compete with a concern located at Cincinnati for Mississippi points, or points beyond the Mississippi River. Is that true?

2250 A. Well, you asked that question. I was not referring to Cincinnati; I should have said the factories that are located nearer the Mississippi territory.

Q. Well, is not a factory located in Cincinnati closer to th Mississippi territory than you are?

A. Well, I have not the mileage.

Q. Well, you have a general idea?

A. Well, they are nearer to St. Louis.

Q. Are they not nearer to Mississippi points than you are?

A. Well, now that is a question. Are they nearer to Quinc than we are.

Q. Well, you are making the complaint and you ought to kno what points you are discriminated against. I will ask you t state whether it is nearer to Quincy; what do you think about it

A. Well, Cincinnati is nearer to Quincy than Buffalo is.

Q. Your objection, as I understand you generally, to this ne classification is, that it enables the soap manufacturer located near to the point of consumption to do that business which natural comes within that radius; more easily than you can at a great distance?

A. Yes, sir.

Q. That is your objection. You think this difference in di tance ought to be equalized by the railroad company, so as to gi you an equal advantage with the fellow closer to the trade. Is th the theory?

2251 A. Well, the railroads ought not to make it more dif cult than it was before.

Q. Please explain how they make it more difficult?

A. Why, in the difference in the freight rate.

Q. Is that difference in freight rate made difficult to oth shippers as well as to you?

A. It does not affect the local men.

Q. It does not affect the local men?

A. No, sir.

Q. Does this new classification affect the local men, that y were complaining of?

A. I sa*t* it does not affect the men who are nearer to the poi where they sell their product.

Q. Take a factory that does not sell in the City where it is l cated, does not this classification bear upon you alike?

A. For the same distance it would.

Q. Well, you are aware of the fact, that the Interstate Commer Law requires railroads to do that very thing, are you not?

A. That is my understanding of the law.

Q. And that is what you are complaining of?

A. No.

Q. Then what is the opposition of this new classification?

Q. The basis complained of is the advance in rates.

2252 Q. An advance in the rates. That is it. Not that it d criminates as to one shipper against another?

A. It disturbs the basis upon which we have been working sin 1887.

Q. Well, that basis has been disturbed several times heretofor

was it not disturbed in 1891, when the basis of net weights was done away with?

Mr. MATTHEWS: He said that it was in 1887?

A. So far as my recollection goes, it was not disturbed sin-e 1887, as far as net weights is concerned.

Q. Was it in any other way?

A. Yes, when the minimum rates on car-load rates was changed.

Q. Are you getting net weights now?

A. No, sir.

Q. You pay gross weights now, for the goods actually handled, under the present classification?

A. Yes, sir.

Q. When did that go into effect?

A. In 1887.

Q. Have you paid all along, from 1887 to 1891, on gross weights?

A. So I understood.

Q. So you understand. Don't you know whether you did or not?

A. So far as I know, we have paid since 1887.

2253 Q. Well, I asked you, if you do now or did you depend upon the shipper for handling during that time? Did you have anything to do with the shipment of freight, from that time yourself; from 1887 to 1891?

A. Not directly.

Q. Do you know then, positively what was done from 1887 to 1891, of your own knowledge?

A. Well, I do not believe that I could swear that now of my own knowledge.

Q. Now, you were objecting a while ago to the large Packing Houses shipping soap in on car-load rates with mixed contents of cars; that advantage was due to the fact that their business was various; that is to say, they handled not only soap, but some other product?

A. I presume so.

Q. Could you not have done the same thing, if you had been in the same kind of business?

A. I presume so.

Q. There is no discrimination against anybody on account of that fact; anybody would have been allowed to ship the same way, if they had products to ship in that manner?

A. I presume that is the case.

Q. That is the case to-day?

A. So far as I know.

Q. Now, what is the minimum, the rate they have to pay under that arrangement, where they ship in mixed car load lots?

A. Thirty thousand pounds, I believe.

Q. On how many thousands?

2254 A. Well, I do not know what the minimum weight is.

Q. Don't you know it is from twenty to thirty thousand?

A. I know we have to pay on thirty thousand pounds.

Q. Well, do you know what they have to pay?
A. I do not know.
Q. Then how do you figure you have to pay it?
A. Well, I took it for granted it was thirty thousand pounds.
Q. Well, that is all you know about it. Did you examine yourself to know what it was?
A. No I did not.
Q. Now, you say that there was some advance in the price of common soap in December 1899?
A. Yes, sir.
Q. Of how much?
A. Well; I think it varied from two to eight per cent.
Q. How much per box, about?
A. Well, on some brands it won't amount to three cents, and some it amounted to a little more.
Q. How much more?
A. Well, about twenty cents.
Q. From three to twenty cents a box?
A. Yes, sir.
Q. Do you know of any increase in freight rates that amounted to that much per box in the last ten years?
2255 A. Not so much per box; no, sir.
Q. Now, who made that increase of price, who inaugurated it in the matter of this price?
A. Well, we made it then.
Q. Whom did you consult about making it?
A. Nobody.
Q. Nobody at all?
A. Nobody only ourselves.
Q. You did not consult any other manufacturers about it?
A. Not one.
Q. What did you make that advance for?
A. Because the price of raw materials had advanced very much.
Q. Was that the reason you made it?
A. Yes, sir.
Q. Did you make it enough to cover those?
A. No, sir.
Q. Why did you not make it enough to cover the price of raw material?
A. We could not.
Q. Did not you maintain the price?
A. We have maintained them.
Q. Has there been any increase since that time?
A. Well, we have on a few odd brands, it does not amount to anything.
2256 Q. Well what did you make it for if it did not amount to anything. Now, as a matter of fact, has there not been a general increase of the price of soap all over the country since you increased?
A. Many of the manufacturers have advanced.
Q. Have they advanced more or less than you have?

A. Well, I don't know any manufacturers who have advanced all their brands.

Q. I am not speaking of that; I am speaking particularly of common laundry soap.

A. Well, the proportion has been about the same, generally.

Q. Under the same causes that led to the advance at the time you made it, then if they demand further increase in prices, they are at your command, are they not?

A. Well, if they had the same reason.

Q. Have you not the same power as then?

A. Yes, sir.

Q. Do not the same causes and conditions exist as then?

A. We have the right to make the advance at any time.

Q. That is not by limited competition, is it?

A. Yes, sir; that is.

Q. And that competition in your case is largely, whom?

A. All the soap makers between the Mississippi River and
2257 the Sea Coast.

Q. Between the Mississippi River and the Sea Coast.

A. Yes, sir.

Q. Now if it is true, there are very few soap manufacturers, concerns, who are in the business for their health?

A. Some of them seem to be.

Q. Has your firm been in that shape?

A. They seem to be just now.

Q. Do you decline to say to what extent their health has been impaired by the amount of capital invested. Is that true?

A. Well, you had better leave jokes aside.

Q. You do not care to make any statement upon that subject, do you as to what money or capital you have invested in your plant?

A. I have answered that.

Q. You do not want to answer that conditionally now?

A. No, sir.

Q. What is that fixes the price of common soap anyhow? Is it the cost of the raw material that enters into its manufacture, and the cost of manufacture or the cost of selling, transporting and delivering and some reasonable profit upon it?

A. Yes, sir; those are the principal parts; the basis.

2258 Q. That is the basis that fixes the price. According to your statement from December 1898 to 1899, there was an increase of about forty per cent. in the cost of tallow?

A. Roughly about fifty per cent.

Q. And on soda ash about fifty per cent.?

A. Yes, sir; one hundred.

Q. And on rosin about forty or fifty per cent.?

A. Yes, sir.

Q. And on Cotton oil from nineteen to thirty cents a gallon; say something over sixty six per cent. Those are the increases in the costs of raw material?

A. Yes, sir.

Q. Has there been any increase in the cost of manufacture?

A. Not in our cost.

Q. Has there been any increase in the cost of selling and delivering?

A. Yes, sir.

Q. How much of an increase in the cost of transportation?

A. About twenty per cent. in car-load lots and about twelve per cent. in less than car-load.

Q. Then the average cost of transportation has been advanced less than any other element that enters into the business?

A. Oh, no.

2259 Q. It has advanced less than the cost of tallow?

A. Yes, sir.

Q. Less than the cost of soda ash?

A. Yes, sir.

Q. Less than the cost of rosin or cotton oil, has it not?

A. Yes, sir.

Q. Legitimately and particularly, the business of common soap, if taken on a reasonable basis as a business, and you have stated the conditions which fix the price, would justify an increase of prices of forty or fifty per cent., in the selling?

A. Why pretty near that much.

Q. That is what ought to be done?

Q. In order to make a decent profit.

Q. To make it a decent profit?

A. Even make it a productive business.

Q. You think that is the condition of your business?

A. Yes, sir.

Q. And you think the railroad companies ought to be compelled to make good that deficiency?

A. I have not said anything of the kind.

Q. Do you think they ought to partly contribute, is that your idea?

A. I think I have stated before, that they ought not to make it more difficult than before.

Q. That is assuming that they control the elements that go
2260 to make up all the facts of that transportation. Do you think the railroads ought to under the present increase of the cost of all the articles carry freight at the same rate when the cost of all the articles were fifty to one hundred per cent. higher?

A. If the cost of transportation is no higher now than in 1887, they ought not to charge any more?

Q. Well, if it is greater, then what?

A. They have the right to do as they like.

Q. If it is greater now than it was in 1897, what do you say about their right to increase in proportion; or 1898?

A. Why did they not increase.

Q. Did you not increase the price of your soap in December 1899?

A. I think we did.

Q. Do you not think the railroad has the same right to increase the freight rate to the same relative proportion to make it a profitable business, or do you think they have no such right?

A. I think the railroads know what they can do without my telling them.

Q. You think they conduct the business properly and have the right to?

A. So far as they conform to the law.

2261 Cross-examination.

By Mr. BAYLESS:

Q. Have you examined the official classification, No. 20, effective January 1st, last?

A. Why, I have read it.

Q. Whether you have looked at the classification of soap as compared with the classification of other articles?

A. No, sir; not to compare it with the other articles.

Q. Then, you cannot say from your own examination that soap is unfairly or unduly classed along with other articles of the Fifth class and in the Third class, less than carload loads?

A. I have no opinion.

Redirect examination:

Q. You were asked some questions in cross examination about shipping soap at net weight prior to 1887, and you said something about that being just a practice, because there was a shrinkage in the soap. I will ask you in that connection to say whether or not, soap is sold to the trade by the pound?

A. It is not sold by the pound.

Q. How is it sold?

2262 A. It is sold by the brand, so many cakes in a box.

Q. By the box?

A. By the box.

Q. How is it sold by the retailer to the consumer?

A. By the cake.

Q. How many cents per cake?

A. So much a cake.

Q. In your cross examination you were asked, whether the points beyond the Mississippi and points in the south, were within the territory covered by the Official Classification, and the question was put how then the Official Classification could affect your rates to those points, if they were not in the territory. You will please state in that connection how much of the official territory you have first to go through, before you reach the territory in which the trans-Mississippi points are located?

A. We have to go through the whole of it from Buffalo to Mississippi.

Q. You may state then, how your rates to the Mississippi points are affected by the classification of rates in force in the official territory?

A. Well, wo do not go beyond the Mississippi; The Central Traffic Association covers all our shipments practically.

2263 Q. If you did ship from Buffalo to Kansas City, what classification or rates would be given your shipment from Buffalo to the Mississippi River?

Mr. HAMILL: I object, as he has stated there is no such shipments.

A. It would be Fifth Class, car-load rates; Third Class less than car load.

Q. Would your shipment to the Mississippi River be covered by the Official Classification?

A. As far as the limits of the classification are concerned.

Q. You were asked about your power of advancing rates, and whether or not you did not have the power now, to advance the price of soap to a point that would be commensurate with the price in raw materials, and you answered, you did have that power. Is there any practical limit to the exercise of that pwer?

A. Yes, sir; the element of competition.

Q. You may state whether or not, that limit has been reached in the advance you made in December?

A. The limit certainly has been reached.

Q. Can you tell approximately what has been the percentage of reduction in the margin of profit on a box of Acme Soap within the past year?

Mr. HAMILL: I object to it as not proper re-direct examination. It is a matter in chief.

A. Comparing prices, based upon the present price of raw material and the present selling price, the profit has been cut down
2264 more than two-thirds.

Q. You have stated, that you have advanced the price of your product, so *as* as possible, in order to cover in part the increase of the raw materials; upon what part of your customers have you levied this increased price of your product?

A. Upon what part of our customers?

Q. Yes, sir.

A. It has been against everybody.

Q. You did not select out a few of them and levy that increase against them?

A. No, sir; general.

Cross-examination.

By Mr. HAMILL:

Q. Who makes Acme soap?

A. Messrs. Lautz Bros., & Co.

Q. Any other firm make it?

A. No, sir.

Q. This is just the one soap you have been asked about?

A. Yes, sir.

Q. What are the profits to you on the manufacture of a box of Acme soap at the present time?

A. Figuring on the basis of the present price of materials, it would not exceed three cents.

Q. It was formerly about nine cents?

A. Nine and two-tenth cents.

2265 Q. You still have a profit left of three cents. That is true is it not?

A. On that brand; yes, sir.
Q. With the increased cost of raw material, as you have stated here, running from fifty to one hundred per cent. in the cost of raw material, you are still able to make a profit on that brand of soap?
A. A very sight profit, because that particular brand is sold to low freight points.
Q. Because that brand is sold how?
A. At low freight points.
Q. Does that soap come in competition with Ivory soap made by Procter & Gamble?
A. No, sir.
Q. There is more profit on that class of soap such as Ivory is there not?
A. I do not know what their advertising expenses are.
Q. Well, I am asking you generally?
A. Oh, generally.
Q. Generally that is true?
A. Yes, sir.
Q. Does not that soap pretend to be a toilet soap? of character as well as laundry soap; the Ivory made by Procter & Gamble?
A. I do not remember what it is; I think it is a laundry and toilet.
Q. Is it not quite extensively advertised in that way, in magazines, and as a toilet soap as well as a laundry soap?
A. I think it is.

2266–2468 STATE OF OHIO, *County of Hamilton, ss:*

I, Matt. J. Day, a Notary Public within and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the above named Bradley M. De Lamater, and Carl Lautz, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions were reduced to writing by me in Shorthand, by agreement of counsel of the parties present, and the signatures of the witnesses thereto waived, in the presence of the said witnesses respectively; that the foregoing is a true and correct copy of my shorthand notes; that said depositions were taken by me at the time and place specified in the notice hereto attached, and that counsel were present of the respective parties as heretofore noted; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In testimony, whereof, I have hereunto subscribed my name and affixed my Notarial Seal on this the 10th day of April, A. D. 1900.

* * * * * * *

2469 And afterwards, but on the same day, to-wit: November 10th. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, on their behalf in this cause, the Testimony of B. C. Robinson & J. C. Flack, in the case of The Procter & Gamble Co. *vs.* The C. H. & D.

Ry. Co. *et al.*, which Testimony is clothed in the words and figures following to-wit:

Depositions of witnesses taken before me, Matt. J. Day, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the plaintiff in an action pending before the Interstate Commerce Commission, wherein The Procter & Gamble Company are plaintiffs and The Cincinnati, Hamilton & Dayton Railway *et als.* are defendants, Mortimer Matthews, Esq., being present as attorney for plaintiffs; Lawrence Maxwell, Jr., Esq., being present as attorney for the C. H. & D. Ry. Co., The P., C., C. C. & St. L. Ry. Co., and The Penna. R. R. Co.; S. O. Bayless, Esq., being present as attorney for the C., C., C. & St. L. Ry. Co., The L. S. & M. S. R. R. Co., and the N. Y. Central R. R.; Edward Colston, Esq., being present as attorney for the B. & O. S. W. R. R. Co.

2470 BYRAM C. ROBBINS, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. State your name, age, residence and occupation?

A. Byram C. Robbins; residence, Detroit, Michigan; Agent of The Procter & Gamble Company, Sales Agent for Michigan and Indiana.

Q. How long have you been connected in that capacity with The Procter & Gamble Company?

A. About fifteen years.

Q. Over what part of the states of Michigan and Indiana, do you sell their product?

A. The whole of the Peninsula of Michigan, all the largest cities and towns in the State of Indiana, with the exception of New Albany and Jeffersonville.

Q. Do you sell all their brands of soap?

A. Not all their brands.

Q. Please name the principal ones you sell in those states?

A. Ivory Soap, Lenox Soap, and Mottled German Soap.

Q. Do you meet a competition of other Soap Manufacturers in those states?

A. Yes, sir; several of them.

Q. Please state who your competitors are in that territory?

2471 A. You mean the Manufacturers in that territory?

Q. Yes, sir; and where they are located?

A. In Detroit, The Detroit Soap Company; Jackson, Michigan, The Central City Soap Company; Saginaw, Michigan, Henry Passolt; those are the leading Soap Manufacturers in the State of Michigan, although we have competition from outside manufacturers.

Q. From Chicago?

A. Chicago and Milwaukee.

Q. How about Indiana?

A. In Indiana, the leading Soap Manufacturers of the State are A. Kingan & Co., Indianapolis; C. Melzer & Co., Evansville; Heppe & Sons, Logansport; Summit City Soap Company, of Fort Wayne; Star City Soap Company, Lafayette, and one or two smaller concerns of Indianapolis.

Q. What is the nature of the competition with those various Manufacturers?

A. Well, the competition is largely local; for instance Fort Wayne concerns that manufacture soap have quite a large trade in the City and in the large towns about Fort Wayne. The same may be said of the concerns at Logansport, and Lafayette, and also in Evansville. The Indianapolis Manufacturers, gets further away from home than any of the others and spreads pretty well over the State.

Q. How about the nature of the competition in Michigan?

2472 A. Well, it is very largely the same in Michigan, with the exception of the Detroit Soap Company and the Central City Soap Company of Jackson, their trade extends around the State.

Q. Do you meet any competition in Indiana from Manufacturers outside of the State of Indiana?

A. Yes, sir.

Q. Please state in a general way who they are and what the nature of the competition is?

A. The competition in Indiana, is largely from the concerns of Schultz & Co., of Zanesville, Ohio; Fairbanks & Co., of Chicago; Kirk & Co., of Chicago, and from the Louisville Soap Company of Louisville, and the Globe Refining Company of Louisville; those are the principal competitors we have in Indiana. Also I may add, from Cudahy & Co., and Swift & Co., of Chicago, they are working their soap into the trade there.

Q. They are packers?

A. Yes, sir; and Armour & Co., do more business in Michigan than in Indiana, they are competitors.

Q. What is the nature of the competition you meet with in those two states, with reference to its degree of sharpness?

A. Well, we have some very sharp local competition, for instance, in Detroit, competition is very sharp, because Detroit men put their efforts in largely about home; they have spread out over part of the eastern portion of Michigan, but do not get very far west.

2473 The Central City Soap Company of Jackson, their competition is pretty general over the State. Passolt & Co., of Saginaw, their competition is local but they work very closely in their territory.

Q. Do these various soap makers you have mentioned make substantially the same kind of soap that The Procter & Gamble Company make?

A. Substantially the same; yes, sir.

Q. How is the price at which you can sell your soap affected by the local manufacturer?

A. Well, I should say, that the element of competition enters

into it and necessarily restricts the price at which we can sell our goods greater than if there were no competition.

Q. How do you sell your goods, your product, with reference to the freight rate?

A. I do not quite understand the question.

Q. That is, do you sell your product delivered?

A. Oh, yes, the goods are sold delivered in all railroad towns in both states.

Q. Which means that you prepay the freight?

A. Prepay the freight.

Q. You have mentioned Kingan & Co., of Indianapolis, what is the character of their business; what is their mode of doing business, if you know?

A. Well, Kingan & Co.'s, chief business until within the past two or three years, has been the packing business, selling meat
2474 and provision, and perhaps within two or two and half years they began the manufacture of soap, out of some of their product, and have been selling it in connection with some of their product throughout the state, and especially in the state of Indiana. As I understand it, their salesmen in taking orders for their provisions, include what soap they can sell in the same order.

Q. Do you know how they ship their soap?

A. Well, their soap is shipped along with the provisions which they sell.

Q. In car-load lots, that is?

Mr. BAYLESS: He does not say so.

Q. Well, I ask whether that is the case. Do you know this Mr. Robbins, of your own knowledge?

A. Yes, sir; I do.

Q. When you say they ship soap along with their provisions, what do you mean by that; explain more fully?

A. For instance, a man takes an order for provisions; say for instance, at Richmond, Indiana, or any other town in the State, he includes in his order to the same party, one, two or five boxes of soap, and the soap is shipped along with the provisions to the dealer.

Q. What, if anything, have you to say with reference to Armour in Michigan, upon the same subject?

A. Armour & Co., does the same, ship provisions and soap in the same car.

Q. Now, about Kingan & Co.'s price?

2475 A. Kingan & Co.'s prices have always been considered very cheap as compared with other manufacturers' goods of the same grade.

Q. What grade do they make?

A. It is pretty hard to specify a grade without a comparison. They have one brand, "Utility" soap, that is an inferior grade to "Lenox Soap," about such a grade as The Proctor & Gamble Co.'s "Town Talk."

Q. How does the price compare with the "Town Talk" soap?

A. At the present time the price is twenty cents a box less.

Q. Going back a little bit to the subject of The Procter & Gamble

prepaying freight; are they able to absorb the recent increase in freights in the price of their soap; have they been able to?

A. Well, I should say that the increase—the recent increase in price would not do that.

(By Mr. BAYLESS:)

Q. The recent increase in the price of soap, would not be as much as the increase in freight?

A. That is what I mean; yes, sir.

Q. Now, when you go into a town where there is a local factory, you may state whether or not, you have to meet the price made by that local factory on its soap; say on the same grade of soap?

A. Necessarily on the very brands of soap. There is always
2476 a demand in such towns having a soap manufactory in the town, and where we look to largely for trade in going to these towns, it is necessary that you should meet their prices in order to do business.

Q. State whether or not in such places it is possible for you to add the increased rate recently made to the price which you offer soap sold there?

A. I should say not.

Q. What if anything, has been the tendency of prices generally in soaps during the last ten or fifteen years?

A. I have been connected with The Procter & Gamble Company factory a little over fifteen years, and in that time the general tendency on tallow soaps has been downward.

Q. Can you illustrate that by the price of some particular brand of theirs from 1885 to 1887 to the present?

A. I might take, for instance, the Mottled German Soap, the Lenox, or any other tallow soap. Taking the Lenox, which started originally at a cost to the Jobber of $4.60 per box, that was in 1885, it then declined to $4.50, $4.35, to $4.25, and from that on down until it reached as low a point as $2.50; that was last year.

Q. And since then there has been a slight advance?

A. A slight advance.

Q. How much on a box?

A. The price to-day to the Jobber is $2.70 per box, and the
2477 same may be said about all the grades of soap which I have mentioned.

Q. You mean reduced in about the same proportion?

A. Reduced in about the same proportion.

Cross-examination.

By Mr. MAXWELL:

Q. Do you have a uniform price?

A. In the two states? Yes, sir.

Q. Have a uniform price over the United States?

A. Well, I do not know anything about the business outside of those two States.

Q. Is the price in Indiana and Michigan the same as in Cincinnati?

A. I think it is, but I am not positive of that.
Q. Have you any knowledge upon that subject?
A. No, I have not.
Q. Do you know the price in Cincinnati?
A. I do not.
Q. Do you know whether it is higher or lower than the price in Michigan?
A. No, I do not.
Q. Is the price in Indiana and Michigan the same without reference to the distance of the place from Cincinnati?
A. Yes, sir.

Q. You charge the same price to a dealer in Saginaw,
2478 Michigan, as to one in Greensburgh, Indiana, for instance?

A. We have no customer there in Indiana that we sell to.
Q. Well, take some point near to Cincinnati?
A. Yes, sir.
Q. You do not increase the price on account of the distance you have to ship the goods?
A. Not in the last three or four years.
Q. How was it formerly?
A. The Procter & Gamble Company had what they call a free delivery system, and towns were listed on a different list and prices were made to different towns, according to the number on the list, which difference, I believe, was on account of the freight rate.
Q. Who fixes the price for your soap?
A. I do not know as to that.
Q. You simply get the price from the home office?
A. Yes, sir.
Q. Do you deliver at any cut prices?
A. No, sir.
Q. Your business is simply to get the orders at the prices fixed?
A. Yes, sir.
Q. You have nothing to do with the fixing of that price?

A. Nothing at all.

2479 Q. You do not know what considerations affect the officers of the Company who fixed the price?

A. I do not.
Q. You are nothing but a salesman to obtain the orders at the prices given to you?
A. That is the idea; yes, sir.
Q. Do you know anything about the manufacturing department of your company?
A. Nothing at all.
Q. Nothing about the cost?
A. Nothing at all.
Q. Nothing about the prices?
A. No, sir; I have never been in the confidence of the Company sufficient to find out.
Q. Do you own any stock in the Company?
A. No, sir.
Q. Do you know the price of the stock?

A. Nothing except by newspaper reports.
Q. Well, you know by the market reports, do you not?
A. Yes, sir.
Q. What is the price of The Procter & Gamble stock?
A. The last I saw it was four hundred common.
Q. For a hundred dollar share?
A. Yes, sir.
Q. What was it two years ago?
A. Well, I can't recall what it was two years ago.
2480 Q. Well what was it more or less than four hundred a share?
A. Well, not having it distinctly in my mind, I would not be able to say.
Q. Are you able to say that it was less?
A. Might be less, but I would not know how much less.
Q. Do you deal in anything but Procter & Gamble soap. Do you sell anything else than soap?
A. A few candles.
Q. Then your business is exclusively the soap business, with the exception of a small trade in candles?
A. Yes, sir.
Q. You understand I am asking you about the Procter & Gamble soap only?
A. Yes, sir.
Q. Do you know how recently the market price of The Procter & Gamble stock was par?
A. I do not know definitely; I should judge some nine years ago. Nine and a half years ago possibly.
Q. Then within a period of nine or nine and a half years, the market price of stock in this company has quadrupled, is that so?
A. Possibly; yes, sir.
Q. Were you ever in the employ of Kingan & Co., or Armour & Co.?
A. No, sir.
2481 Q. Did you ever have anything personally to do with any shipments that either of those concerns made of soap in cars which also contained dressed beef?
A. No, sir; not personally.
Q. What personal knowledge have you, of any shipments made by either of those concerns of soap in cars containing beef?
A. Only from the statements that one of Mr. Kingan's men has made to me, and a man whom I have known for some years occupying a similar position to my own, and whom I meet occasionally in Indiana.
Q. Then you have no knowledge upon this subject except that which you got from this gentleman?
A. Yes, sir; and through my own salesmen, what they have written me on the subject.
Q. What they have written?
A. Yes, sir.
Q. That is the only knowledge you have upon the subject?

A. Yes, sir.

Q. Have you a personal knowledge of any case in which Kingan & Co., or Armour & Co., made a shipment of soap in a car containing dressed beef?

A. Nothing more than I have told you.

Q. You mean nothing except what some one else told you?

A. Yes, sir.

2482 Q. Do you know what rate Kingan & Co., or Armour & Co., pay for instance, upon soap, say in a car with dressed beef?

A. No, sir; I do not.

Q. Do you know what the dressed beef freight rate is?

A. I do not.

Q. Do you know whether higher or lower than soap?

A. I do not.

Q. Do you know whether putting a shipment of soap in a car containing dressed beef, that the freight rate is the dressed beef rate?

A. I do not.

Q. Do you know what conditions or limitations are placed upon shipments of that character?

A. No, sir.

Cross-examination.

By Mr. BAYLESS:

Q. You say that within the last fifteen years the price of soap has gradually decreased?

A. Yes, sir.

Q. Is it not a fact that freight rates during the same time have decreased?

A. Possibly; I do not know anything about freight rates. That is, I have not paid close attention to the matter.

Q. Your business does not require you to know anything about freight rates, at all?

A. No, sir.

2483 Q. I understood you to say upon your direct examination, that the increase in the price of soap does not absorb the increase in freight rates?

A. How is that.

Q. The recent increase in the price of soap made by the Procter & Gamble Company, does not absorb the recent increase in freight rates?

A. I do not believe I made that statement.

Q. Well, what is the fact about it. Has not the increase in the price of soap been much more than the increase in freight rates?

A. I should say that the increase in the price of soap, which is practically fifteen cents a box, would not pay the increase price in freight.

Q. Then, do you mean to be understood that the increase in freight rates amount to more than fifteen cents a box; is that your understanding?

A. I should think so.
Q. When was this increase in the price of soap?
A. The 13th day of January.
Q. Was there not an increase last September also?
A. Yes, sir; I think there was.
Q. How was that increase last September or sometime in the fall?
Q. Well, it varied in different brands of goods. It varied.
Q. Well, take common laundry soap, that grade that you sell most of, what would be the increase last fall?
2484 A. I do not believe I can tell you off-hand just exactly what it was.
Q. Was it ten per cent.
A. No, sir; not that much.
Q. Well, that increase was made prior to any freight rates. The first increase in the price of soap.
A. Yes, sir.
Q. Then if the increase in freight rates took effect January 1st, you made an increase in the price of soap of fifteen cents per box?
A. Yes, sir.
Q. That was in January last?
A. Yes, sir; the 13th of January.
Q. What brought about the increase, if you know, last September?
A. I do not know.
Q. It is a matter you have nothing to do with at all?
A. Nothing to do with at all—fixing prices.
Q. You have spoken here ab-ut the local competition which you had; that is, competition of local soap factories at different places, does the freight rates have anything to do with that. Would you not have the same competition regardless of freight rates?
A. We would have the competition without the freight rates, but be better able to meet it than with the freight rates increased.

2485 Redirect examination:

Q. Mr. Robbins, what, if any duty, have you to the Procter & Gamble Company with regard to reporting the conditions in your territory and advices to the Company, with reference to the same and as to the price which should be given &c.?
A. I feel under obligations to the Procter & Gamble Company, to report the conditions as I find them in my territory, the increase in price, the decrease in price of my competitor or any other information which I thought would be to their advantage.
Q. What has been your habit in that respect?
A. It has been my custom to write them promptly when they came to my notice.
Q. What, if any, subordinates have you had through the territory?
A. I have Agents in the territory who make reports regularly.

Q. To you?

Q. To the Company, weekly reports of any information that they may have and also to myself.

Q. What relation do you bear to those subordinates?

A. I have had the oversight of the territory and supervision of their work.

2486 Q. You may state whether or not the Company depends upon you as the only source of information it has with reference to those subjects?

A. As references to the changes in the situation?

Q. Yes, the prices by which they are ruled &c. &c. and as to their competitors are and how they are conducting Their business &c. &c.?

A. I think they looked to me for information of that sort in addition to what I have stated in regard to the other salesmen.

2487 JACOB C. FLACH, of lawful age, being first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. State your name, residence and occupation?

A. Jacob C. Flach, residence, Cincinnati, Wholesale Grocer.

Q. How long have you been in the business of Wholesale Grocer?

A. About twenty years.

Q. In Cincinnati?

A. In Cincinnati; yes, sir.

Q. What is the business name of your concern?

A. The Flach Bros., Grocery.

Q. I should like to ask you the prices of certain grocery articles in which you deal, and the way in which they are put up; first as to the Cereal products?

A. The cost price or the selling price?

Q. The price to the Jobbers and the price to the Retailer, if you please, separately?

A. You mean of the cereal products, covering the whole product, vegetable and meat products.

Q. First, as to vegetables?

A. Those are usually in cases; three dozen to the case, in two pound packages and the average price would be—you want

2488 the cost and selling price?

Q. Yes, sir.

A. Seventy-five cents per dozen and sell at ninety cents per dozen.

Q. That makes it how much per pound?

A. Two pounds in a package; about three cents.

Q. Cereal products are also sold in bulk?

A. Yes, sir; in barrels.

Q. What is the price in barrels per pound?

A. About half that, a cent and a half.

Q. What is the price to the Jobber per pound of chickory?

A. Six cents, package chickory.

Q. The price to the Jobber of coffee in sacks, green, per pound?

A. Eight to fifteen cents. Excuse me. Do you want the average price or from the lowest to the highest.
Q. Have you given the lowest and the highest?
A. I have given those that most are sold of.
Q. Well, what would be the average price?
A. Green?
Q. Yes, sir.
A. About thirteen cents.
Q. How many pounds to a sack?
A. About one hundred and thirty five pounds.
Q. Now, the price to the Jobber of coffee roasted. I will confine my price to the Jobber after this, and when I ask the price
2489 I shall mean the price to the Jobber. Of coffee roasted, the average price per pound.
A. About fifteen cents.
Q. The range is between what prices?
A. That is the reason I asked that question before; there is some very high grade coffee sold, but it does not cut enough figure to make a high average; they range from ten cents to thirty cents, but the bulk of them sold in this market is about fifteen cents.
Q. How is that packed for shipping?
A. The roasted coffee is packed in cases, the bulk of it.
Q. Do you sell extracts?
A. Yes, sir.
Q. What is the average price to the Jobber of extracts?
A. By the dozen or gross?
Q. Or per pound if you can give it?
A. About twenty five cents.
Q. Now take canned fish?
A. What kind of fish. Do you mean sardines or salmon?
Q. Take sardines and salmon?
A. The price per case?
Q. Yes, the price per case to the Jobber?
A. Three dollars and seventy five cents for sardines.
Q. How many cans to the case?
2490 A. One hundred cans of the small size and fifty of the large.
Q. And the gross weight of the fifty cans is how much?
A. About seventy five pounds. Let me change that and make it sixty five.
Q. That was sardines?
A. Yes, sir.
Q. Now, give the same information as to canned salmon?
A. What do you want; the price per case?
Q. Yes, sir.
A. One dollar and twenty five cents per dozen; four dozen in a case; that is the average price.
Q. Can you give the gross weight of a case?
A. They call them one pound cans; that would be about sixty pounds.
Q. Can you give the same data as to salt mackerel?

A. They are two hundred pounds to the barrel and about eighteen dollars a barrel; that is two hundred gross, not net.

Q. Now as to flour:

A. We do not handle much flour; I can give you the average price at three dollars and fifty cents per barrel.

Q. A barrel weighs how much?

A. One hundred and ninety six pounds net.

2491 Q. Concentrated lye?

A. The price to the Jobber, you want?

Q. Yes, sir.

A. Three dollars and thirty five cents a case.

Q. How many cans to the case?

A. Forty eight.

Q. Do you know the weight of a can?

A. No; but a pound and a half I should say on an average.

Q. Now, as to macaroni?

A. In bulk, ten pounds in a box, five cents a pound. In packages twenty five pounds to the box and worth seven cents a pound.

Q. Do you handle cured meats?

A. No, sir.

Q. Now, Cove Oysters in cans?

A. The price?

Q. Yes, sir.

A. One dollar a dozen on an average.

Q. How many cans to the case?

A. Twenty four cans.

Q. The weight of a can?

A. The weight of a can would be about a half a pound.

Q. Preserves in pails?

A. Five cents per pound; thirty pound pails.

Q. Are pepared fruit butters included in that category also?

2492 A. Yes, sir; the same price.

Q. Rice?

A. The average price you want?

Q. Yes, sir.

A. About five cents per pound.

Q. Shipped in bags or barrels?

A. Bags and barrels; one hundred pounds in bags and in barrels it weights three hundred and twenty five pounds on an average. I am speaking of domestic rice.

Q. How about foreign rice?

A. That comes in two ways; in a one hundred pound bag and a two hundred and twenty four pound barrel, as it comes into the country.

Q. Any difference in foreign and domestic rice?

A. No; to-day they are about the same.

Q. Canned fruits?

A. Well, there are two sizes, what we call the one pound can at eight cents a dozen, and then there is what is called the three, or two quart can at about three dollars a dozen.

Q. Do you know the weight of the so-called three?

A. Do I know how much they weigh. I should say about two and a half pounds.

Q. Lump starch?

A. Fifty pounds to the case, costs three and a quarter cents per pound.

Q. Starch in packages per pound?

2493 A. Well, about a cent a pound more, say four and a quarter cents.

Q. Now as to Corn Starch?

A. Corn Starch in packages, say five cents on an average.

Q. Is it ever shipped in bulk?

A. Not in our line, manufacturers might use it so.

Q. Sugar?

A. It comes in barrels and bags, the barrels hold three hundred and twenty five pounds on an average; the average price, granulated sugar, is five and a quarter cents; for the one hundred pound bags the price is about the same.

Q. Canned tomatoes?

A. The price is seventy five cents per dozen, and twenty four cans to the case.

Q. The weight of a can?

A. About two and a half pounds for the so-called threes.

Q. Canned peas, beans and succotash?

A. One dollar and twenty five cents per dozen, two pound cans and twenty four to the case.

Q. Canned corn?

Q. The average price is eighty five cents per dozen, two pound cans and twenty four to the case.

2494 Cross-examination.

By Mr. MAXWELL:

Q. Who pays the freight on groceries?

A. In the majority of cases the manufacturers or packers. We buy the majority of our goods at delivery prices.

Q. That is the cost price to you?

A. Yes, sir; I have given Mr. Matthews the cost price.

Q. Do you receive those articles on car-load lots or less than car-load lots?

A. Both ways.

Q. What is the range in prices, for instance, in coffee, any and all kinds of coffee?

A. Well, there is a difference of about three or four cents whether green or roasted; in other words, roasted coffee is worth that much more on account of the shrinkage in roasting; coffee worth ten cents green makes it cost thirteen cents roasted, about. I think I mentioned before my price on green coffee was about thirteen cents; I am speaking of the average price of what we handle in this market. Of course there are higher priced coffees.

Q. What is the highest price coffee?

A. Well, I think the most expensive coffee we handle to-day would be about twenty eight cents a pound green.

2495 Q. What is the lowest priced coffee?

A. Green coffee about seven and one-eighth or eight cents.

Q. What is the highest priced coffee roasted?

A. Well, twenty eight cent green coffee would be thirty two cents roasted.

Q. And the lowest priced coffee roasted?

A. That would be eleven cents.

Q. Do you know what the profit to the importer is on coffee?

A. No, sir; I do not know.

Q. Do you know what the profit to the manufacturer on soap is?

A. No, sir.

Q. Well, when you mentioned the average price on coffee, you took the average price of such coffee as you deal with in your house?

A. Yes, sir; with the majority of my competitors in Cincinnati as grocers.

Q. Take canned goods, what is the highest price of any kind of canned goods?

A. Canned goods?

Q. Yes, sir.

A. About three dollars and fifty per dozen; California extra canned fruit.

Q. What is the lowest price?

A. Of canned goods?

Q. Yes, sir.

2496 A. About seventy cents per dozen.

Q. It ranges between those two prices?

A. Yes, sir.

Q. Do you know anything about the profit to the manufacturer?

A. No, sir.

Q. How does the quantity of canned goods that your house sells, compare with the quantity of coffee?

A. How much more canned goods we sell than coffee?

Q. Yes, sir.

A. About four times as much.

Q. Is that in value or weight?

A. In number of packages or car-loads rather.

Q. How does your sales of coffee compare with your sales of soap, in quantity?

A. Well, we sell three times as much soap as we do coffee.

Q. How does the amount of canned goods compare with the soap sold?

A. About six times as much.

Q. Canned goods or soap?

A. Canned goods.

Q. Six times as much as soap.

A. Yes, sir.

Q. Would that be a fair average of Wholesale Grocers?

A. No; I think our proportion of canned goods are larger
2497 than the bulk of our competitors, we are a sort of specialists. I think the average grocer will sell about twice as much canned goods as soap.

Q. How do the sales of coffee compare with the sales of soap?

A. By the average grocer?

Q. Yes, sir.

A. Of my competitors, for instance.

Q. Yes, sir.

A. He will sell twice as much soap as he will coffee.

Q. How about rice compared with soap?

A. Five times as much soap as rice.

Q. Of starch?

A. About twice as much soap as starch.

Q. What proportion of the sales of the ordinary grocer would soap be?

A. The proportion of his sales?

Q. Yes, sir.

A. I could not tell you that.

Q. Can you give us any idea at all upon that?

A. I would make a haphazard guess would be all.

Q. Perhaps you can tell us the comparative profit to the dealer. How does the Grocers' profit on soap compare with his profit on coffee?

A. It is less. They make more upon coffee than upon soap.

Q. Do you mean a less per cent.?

2498 A. A less per cent.; yes, sir.

Q. How about sugar?

A. We make more on soap than on sugar.

Q. How about starch?

A. About the same.

Q. How about rice?

A. More on rice than we do on soap.

Q. Does the reputation of a brand of soap affect the cost to the grocery?

A. Do you mean to say that a manufacturer whose reputation on a brand is different from one that is not?

Q. Yes, sir.

A. Yes, it does.

Q. What is the reputation of Procter & Gamble's ivory brand?

A. Well, the very highest.

Q. Grocers are required to keep that in stock?

A. Yes, sir; almost all, some of them do not there is a few got back enough to do without it, but the majority must keep it.

Q. How about the Lenox brand?

A. It is in about the same category.

Q. Have to have it?

A. Yes, sir.

Q. The public demanded it?

A. Yes, the customers or public demand it.

Q. And the grocer must sell it?

A. Yes, sir; the facts are up and when the "band wagon
2499 comes, we must be ready.

Q. How does the grocer's profit on Ivory soap compare with other brands of soap not made by the Procter & Gamble Company?

A. Well, we fare as well on that as we do on others.

Q. You mean that the percentage is about the same of profit.

A. Yes, sir; the percentage of profits considering the number of sales; it sels better than the others, easier to sell, there is less wind to be wasted in trying to sell it it is a good deal in our line.

Q. That makes up for the smaller margin between your cost price and the selling price?

A. Yes, sir. You see our young men that go around trying to sell soap with other things, and a customer says, "I want Ivory Soap," he puts down the order and it is done, and he can then devote his attention to selling something else, while if he wastes breath upon a new brand of soap "a sticker," something else is neglected.

Q. But the actual margin, between the cost price and the selling price, to you is about the same as other brands?

A. Yes, sir; The Procter & Gamble Company so far gives about the same margin on the soap.

Q. Do you mean the same as other brands?

2500 A. The same as brands of other manufacturers.

Q. Has any brand of soap the reputation equal to that of Ivory soap?

A. Not here, the same nature of soap.

Q. Does any brand of any other manufacturer, the same as the Lenox Soap, have the reputation of the Lenox Brand?

A. The same grade?

Q. Yes, sir.

A. Yes, sir; I think one here in Cincinnati; that is Werk's; M. Werk & Co., that is laundry soap.

Q. What is the brand?

A. M. Werk & Co.'s mottled soap.

Q. Does any other brand have a reputation equal to that?

A. No, sir; those are the two leading laundry soaps.

Q. I suppose you are acquainted only in this territory?

Q. Yes, sir; I am speaking only of this territory.

Q. What do you include as the territory?

A. Say within the radius of one hundred miles of Cincinnati. That is what I mean by this market. I don't know anything about New York or Philadelphia or Chicago in the soap line.

Q. Do you know whether the Procter & Gamble Company sell to you at the same price as to dealers in other cities?

A. I think they do.

2501 Q. They do not give you any benefit of the saving in freights?

A. I think not. I do not know of it, but I think not.

Q. For what use is Ivory soap sold?

A. Mostly for toilet purposes; they have two sizes, one laundry size and one toilet size; I think it is mostly used for toilet purposes; that is the one we sell most.

Q. Uniform retail prices on that soap?
A. No; not exactly.
Q. Don't they sell the sizes for five and ten cents?
A. They are supposed to be five cents, we have sold for less. I think sold here frequently at four and one-fourth cents a cake largely. The larger ones three for a quarter.
Q. One for ten cents?
A. I do not think much sold for that, because the laundries buying soap would buy more at a time.
Q. Do you deal in fancy toilet soaps?
A. Very little.
Q. What range in the price of soap, all kinds of soap.
Q. Laundry soaps.
Q. No; all kinds?
A. Toilet or laundry.
Q. Yes, sir.
2502 A. The cost to us?
Q. Yes, sir.
A. Well, we buy one toilet soap as low as thirty five cents a dozen, and the cheapest laundry soap at one thirty five cents a box of one hundred and twenty bars, and the highest priced laundry soap we have is Procter & Gamble's large Ivory, six dollars and fifty cents a box.
Q. How many pounds.
A. I don't know; I think it is twelve ounce cakes, one hundred bars, that is twelve hundred ounces.
Q. What is the highest priced toilet soap you sell?
A. The highest priced toilet soap we sell is ninety five cents a dozen. From thrity five to ninety five cents.
Q. How do you say that the Ivory brands compare with the other brands of The Procter & Gamble Company?
A. Well, we sell more Ivory soap of The Procter & Gamble Company than we do of anything else.
Q. How much more?
Q. We sell one fourth more.
Q. Than all else put together?
A. All other brands.
Q. One fourth more of their brand than all the other brands together?
A. Yes, sir.
Q. Ivory soap is advertised as a toilet soap, is it not?
2503 A. The smallest size; yes, sir.
Q. The same quality is in the larger size?
A. Yes, sir; but smaller in weight or size.
Q. What is the difference in size?
A. Eight ounces is the smallest size, and ten ounces is the large one I think.
Q. Is the larges- used for laundry purposes or for bath?
A. It can be used where the small one is used. You see the larger bar of ivory soap has a crease through the center and it can

easily be broken in two, making two of small size; then, of course, it can be used for the bath or washstand.

Q. That crease is made to enable the purchaser to make one large purchase and cut it in two?

A. Yes, sir.

Q. Getting it at a cheaper price than buying two small pieces?

A. Yes, sir; either that or the manufacturer makes that much by taking that nick out of the soap.

Re-direct examination:

—. You said, that you sell about one-fourth more ivory soap than you do of any other brand of the Procter & Gamble Company?

A. Yes, sir.

Q. How is it with other grocers?

2504 A. Well, those who have not a City trade would sell less Ivory soap; in other words, the larger cities are the customers of Toilet soap, or Ivory soap, country trade does not buy Ivory soap as here. The bulk of course, of our trade on Ivory soap is out of Cincinnati.

Q. Now, compare all your sales of Yellow soap with your sales of White or Ivory soap, or similar to Ivory, how do they compare?

A. We sell more Yellow, we sell more Laundry soap.

Q. About how much more, can you give an idea about how much more?

A. Three times as much.

Q. Is not there any other soap in this market which competes with the Lenox beside Werk's, or that competes with Ivory called Ives Family soap?

A. Yes, sir.

Q. State whether there are a number of brands that compete with Lenox?

A. In the local market?

Q. Yes, sir.

A. Yes, sir; a great many.

Q. You may state whether or not the Lenox soap is decidedly affected by the competition of these other brands?

A. Yes, sir; very much.

Q. You have stated on cross examination, that you thought you paid The Procter & Gamble Company the same price here

2505 that others do in other places, or you were examined upon that subject and I believe you said you did not know?

A. That is right.

Q. The fact is, you have no knowledge as to what price they sell?

A. No, sir; I do not know what they sell to the Wholesale Grocers of Cleveland or anywhere; I should have said so when I was asked the question, but I suppose the prices are pretty near alike, because in territory anywhere adjacent our selling prices are alike.

Q. Will you give the names of the brands of soap that compete with the Lenox, and state where they are made?

A. Here in the City do you want.

Q. Well, here in the City or otherwise?

A. Lilag made by the Eureka Soap Company; Alpine made by Desmond & Ryan; Ives Family, made by The Globe Soap Company of Cincinnati; Falcon made by M. Werk & Company; Werk's Mottled German Soap made in Cincinnati. You only want here.

Q. No; any brand made any other place that compete in Cincinnati?

A. Then the Star, made by Shultz & Co., of Zanesville, Ohio; Jaxon, made by Central Soap Company, Jackson, Michigan; Key made by Armour & Co., Chicago. Fairbanks & Co., have a brand
I can't think of. Santa Claus, made by Fairbanks Soap
2506 Company of Chicago; Ajax, made by P. J. Johnson & Co.,
Milwaukee; there are more which I can't now recollect. Fels-Naptha, made by Fels & Co., Philadelphia; those are all I think of.

Q. Babbitt?

A. Babbit-s Best, made by B. T. Babbitt of New York.

Q. You may state whether or not, there are White soaps similar to Ivory on the market here?

A. Yes, sir; Fairbank's Fairy; Armour's White; Kirk's White Cloud, and Globe Pearl, and Werk's High-Ton; that is all of any consequence.

Q. What is the character of the competition between Soap Makers?

A. What do you mean?

Q. In the selling of their soap to the Grocers?

A. You will have to make that clear.

Q. With reference to whether sharp or not?

A. It is very, very close and keenly worked. They work it over by sub-salesmen.

Q. How do you mean?

A. The soap manufacturer in order to sell to the Retail trade, put sub-salesmen out who turn their orders in to the Jobber. Do you understand what I mean?

Q. Yes, sir. Is there any other article in the grocery trade which you have named to-day, in which the competition is any keener than it is upon soap?

Q. What do you mean by keener competition, the margin
2507 is smaller, or more anxious to sell.

Q. Well, all the elements of competition?

Q. You want me to answer in regard to the margins.

Q. I mean the competition in selling to you or selling to the Grocers?

A. The effort on the part of the manufacturer?

Q. Yes, sir; to sell to the Wholesale Grocer?

A. No, I think not. The Tobacco men and Soap men both have to work pretty hard; they work that way here, that I spoke of before; that is, their retail salesmen that work the retail trade and turn the orders in to the Jobbers.

Q. And charge you the same price?

A. They have a fixed price as I understand, and each of the Jobbers must pay them for the soap.

Recross-examination:

Q. What do you mean by this competition, generally the lowering of the prices to you, the cost of some one goods that is sold to you by solicitors?

A. I do not mean to say that The Procter & Gamble Company are the only people, the other fellows try to get in to work off their brands. The reason Procter & Gamble sell goods, is that they make a demand through their mode of advertising, &c.; some of the men do the work on the retal trade.

Q. But this competition you are speaking about does not
2508 induce Procter & Gamble to sell any less to you, does it; have they not, as a matter of fact, increased the price to you within the past year?

A. Yes, sir; on Laundry soaps, and so has all the other soap makers, on account of the advance of tallow.

Q. Other soap dealers have a uniform price also?

A. Not so rigid as Procter & Gamble.

Q. They will cut once in a while?

A. That is right.

Q. And sell to one dealer at less than another?

A. Yes, sir.

Q. Does that appla to Werk & Co.?

A. No, sir.

Q. Fairbanks & Co.?

A. No, sir.

Q. Armour & Co.?

A. No, sir.

Q. Any of the larger dealers?

A. Not to the larger ones.

Q. All have a fixed price?

A. Yes, sir.

Q. All dealers have to pay the same price?

A. Yes, sir; I think so.

Q. Any dealer knows what that price is and must pay that price?

A. Yes, sir.

Q. When you talk about competition, do you mean anything more than among the Drummers?

A. Why, the competition of the soap trade is not as great
2509 as other goods we handle. I said, yes; there is only one other class of goods we handle and that is Tobacco to compare with it; for instance, the starch men do not have to work so hard to sell starch, neither do-s the canned goods men, and the sugar men do not have to work at all, or the coffee men, but they do upon soap and it is sold upon brand, and their object is to introduce brands?

Q. When you talk about competition, you mean simply there are a great many solicitors going around to the trade to sell soap?

A. Yes, that is it.

Q. And do not cut the prices?

A. Well, I do not know; the larger ones do not, there are a lot of soap makers such as Armour and Fairbanks that make inducements.

Q. Procter & Gamble do not hold out that inducement?
A. No, sir.
Q. They stick to their price?
A. Yes, sir.
Q. So do all the large dealers?
A. Yes, sir.
Q. The price of manufacturing soap varies according to the market?
A. Yes, sir; on account of the raw material.
Q. That is affected entirely different from soap?
A. Yes, sir; so far as the change of prices is concerned;
2510 there are different reasons for it.
Q. How many changes has there been in the price of Procter & Gamble's soap, say within the last five years?
A. Well, it would be pretty hard for me to answer and I would not unless I had some way to refer to it.
Q. Within the past year there have been two advances, have there not?
A. On Laundry soap I think there has only been one. Now, I think there has been two on Laundry soap.
Q. Two advances?
A. Yes, sir.
Q. No decline?
A. No decline, no sir.
Q. Take it the year before, any advance?
A. No, sir; if there was a change then it was a decline. Laundry soap was once worth more, then declined and now has gone the other way.
Q. What intervals, can you recollect of any changes made in price?
A. At what time?
Q. An interval of one year or two years?
A. As you ask me, I say two changes in the last year.
Q. Take the year preceding, can you tell us whether there are any or not?
A. No, sir; I cannot. It would be only guess work.
Q. As compared with all other articles that a Grocer sells
2511 the price of soap has been very uniform, has it not?
A. The price of Procter & Gamble soap?
Q. Yes; take the Procter & Gamble soap?
A. Yes, sir.

Redirect examination:

Q. Suppose that the Procter & Gamble Company should advance the price of Lenox soap to-day fifth cents on a box, what would be the effect upon the trade if no on else advanced?
A. They would get left to a large extent. They did that in the last advance.
Q. When yon say there were two advances on Laundry soap by Procter & Gamble, do you mean to be understood that there was two

advances on every one of their brands; for instance, was there two advances on Lenox?

A. No, sir; I think there was a fifteen cent advance on the last and the other I think was twenty cents. Well, now, I do not know whether two advances; I know that there was one which took place about a month ago.

Q. Is it not the fact, that all you remember about it is, that they got out two different lists, in one of which some of the soaps were advanced and in another some other soaps were advanced?

A. You mean at two different times?

2512 Q. Yes, sir.

A. Well, they get up a list when one change is made in any one brand, they issue a new list and that list of course, quotes the price for all soaps.

Q. Have you any knowledge that any one of their brands advanced twice in the last year?

A. No, sir; positively only once.

2513 STATE OF OHIO, *County of Hamilton, ss:*

I, Matt. J. Day, a Notary Public within and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the above named Byram C. Robbins and Jacob C. Flach, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions were reduced to writing by me in Shorthand, by agreement of counsel of the parties present, and the signatures of the witnesses thereto waived, in the presence of the said witnesses respectively; that the foregoing is a true and correct copy of my shorthand notes; that said depositions were taken by me at the time and place specified in the notice hereto attached, and that counsel were present of the respective parties as heretofore noted; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In testimony, whereof, I have hereunto subscribed my name and affixed my Notarial Seal on this the 19th day of April, A. D., 1900.

———.

2514 And afterwards, but on the same day, to-wit: November 10th, 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, on their behalf in this cause, the Testimony of George Dexter and others, in the case of The Procter & Gamble Co. *vs.* The C. H. & D. Ry. Co. *et al.*, which Testimony is clothed in the words and figures following to-wit:

UNITED STATES OF AMERICA.

STATE OF OHIO, *County of Hamilton, ss:*

Interstate Commerce Commission.

THE PROCTER & GAMBLE COMPANY, Plaintiffs,
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY ET AL., Defendants.

Depositions of witnesses taken before me, Wilson E. McDormut, a notary public in and for the county of Cook, in the State of Illinois, pursuant to the annexed notice and stipulation and at the time and place in said notice specified, to be used as evidence on behalf of the plaintiffs in an action now pending before the Interstate Commerce Commission of the United States, in which The Procter & Gamble Company are plaintiffs and The Cincinnati, Hamilton and Dayton Railway Company *et al.* are defendants; the parties being represented at the taking of said depositions as follows:

Mr. Mortimer Matthews appearing on behalf of plaintiffs; Mr. S. O. Bayless appearing on behalf of defendants the New
2515 York Central and Hudson River Railroad Company, the Lake Shore and Michigan Southern Railway Company, and the Cleveland, Cincinnati, Chicago and St. Louis Railway Company;

Mr. Lawrence Maxwell, Jr., of Maxwell & Ramsey, appearing on behalf of defendants the Cincinnati, Hamilton and Dayton Railway Company, and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company and the Pennsylvania Railroad Company.

Previous to the taking of said depositions Mr. Matthews presented, to be attached thereto, a stipulation signed by Mr. Robert E. Hamill, attorney for defendant the Baltimore and Ohio Southwestern Railroad Company, waiving the signatures of the witnesses and stipulating that no objection will be interposed on behalf of said defendant to the taking of said depositions in shorthand and their transcription in typewriting; which stipulation is hereto attached.

It was stated by counsel present that they would unite in said stipulation, except as to the signatures of the witnesses.

2516 GEORGE W. DEXTER.

The said GEORGE W. DEXTER, of lawful age, being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes and says:

Direct examination by Mr. MATTHEWS:

Question 1. Please state your name, residence and occupation.

Answer. Name, George W. Dexter. My residence, 5458 Jefferson avenue, Chicago. Business place, 50 and 52 River street, Chicago, with the wholesale grocery firm of Merriam, Collins & Dexter.

Q. 2. You are a member of that firm?

A. Yes, sir. I have been a member of the firm for nineteen years, but they have only recently changed the name so that my name appears. It has always been a numerous company.

Q. 3. Your firm is a wholesale grocery establishment; they are wholesale grocers?

A. Yes, wholesale.

Q. 4. Do you deal in coffee, sugars, starch, rice, cerealine, oatmeal, cereal products, candles, canned goods and glucose?

A. We deal in all the articles you ask about, with the exception of glucose. Glucose as an article of commerce before it is mixed with corn syrup or cane we do not deal in. We do no manufacturing. Glucose syrup as it is known, we deal in. It is glucose mixed with corn syrup.

2517 Q. 5. Do you deal in soap?

A. Yes.

Q. 6. How does common laundry soap compare in value with these articles that I have named?

A. Some of those articles are cheaper, a few of them, but most of them are dearer than soap; that is, the value per pound of some of them; a few of the articles are cheaper.

Q. 7. What is the average value per pound of common yellow soap?

A. Well, I should say not far at the present time from 3¾ cents; that is, taking the average laundry soap. There is some more than that, and there are some few of the cheaper brands that are less.

Q. 8. What is the average price of coffee?

A. The average price of the green coffee?

Q. 9. Per pound.

A. At the present time it would be not far from 9¾ cents, the majority of what is handled in the green state.

Q. 10. Between what prices does it range?

A. As low as 5¾ cents, and from that up into the 20's.

Q. 11. I mean at the present time, the different grades of coffees.

A. Well, the different grades of coffees range from 7¼ cents up to 19, but the high grade Moc-a coffees and high grade Java coffees are about 28½ to 29 cents, the finest clear Moc-a coffee, and Java.

2518 Q. 12. That is Moc-a and Java?

A. Java coffee is handled very little green.

Q. 13. How about Moc-a?

A. Moc-a coffee is handled very little in the green state. There is very little green coffee handled direct to the wholesale trade. It is handled by the roasters and all goes to the consumers in the roasted state; that is, a very large majority.

Q. 14. What is the average price per pound of coffee?

A. I suppose different firms' prices on roasted coffee vary, and what would probably be an average of what one firm would handle would be liable to be either higher or lower than some other house, owing to one making a specialty, you know, of some grades of coffees.

Q. 15. What is yours?

A. The average price of roasted coffee that we sell in tonnage would be not far from 14 cents. That is, bulk. Package coffees, which constitutes about one-quarter of our tonnage, runs about 9.80—no, about 9.35 now; 9.35 is the average of one-pound package coffee.

Q. 16. Now sugar, if you please.

A. The average price of sugars would be not far from 5⅛ cents. Granulated sugar is now worth about 5.44. That in tonnage is the heaviest, but the lower grade sugars would bring it up to about 5⅛ to 5¼. But to take the entire output of our sugar, I should say that was the average price at the present time.

2519 Q. 17. Starch?

A. The average of the starch would be about 4⅛ cents. That is the average of all the starch that we handle. It runs in value from 3 cents up.

Q. 18. Rice?

A. The average price of rice at the present time would be about 4½ cents.

Q. 19. Cerealine?

A. Cerealine we do not handle. That is the name of a package goods. Formerly we had it, but it is now very little sold. It is one of the obsolete cereals.

Q. 20. Well, cereal products generally.

A. That is something that varies so much. Cereal products and case goods vary. There are so many different brands and they are packed in so many different sized packages that it would be very hard to give an average figure on them, except as a matter of guesswork. Rolled oats, for example, are more sold than any other package goods, and that sells from $3.00 down to $1.50 a case, according to the different brands and different sized cases. We sell more rolled oats than any other package cereal.

Q. 21. What is the average value per pound of rolled oats?

A. In the package, not quite 3½ cents a pound; 3¼ perhaps would be nearer.

Q. 22. Now candles, if you please.

A. We handle so few candles, and I don't buy them. I have not paid much attention to the market on candles, but I think the market on candles at the present time is not far from 8 cents, but that is simply guesswork.

2520 Q. 23. Can you give an average?

A. I would not want to give that to be the value of candles because it is simply my impression. I don't sell any of that kind of goods, and don't buy them.

Q. 24. Can you give the average on canned goods?

A. No; canned goods vary so much and are so different, you know; from one-gallon table goods down to one-gallon peas, and they have got one-pound, two-pound and three-pound (as we call it) canned goods, from vegetables up through all kinds of fruit, so that to make an average value on them would be rather hard.

Q. 25. What is the range of prices at the present time on those goods? From what to what?

A. They range for gallon goods from $8.00 down to $2.25.

Q. 26. A case?

A. A case, one dozen in a case.

Q. 27. Can you reduce that valuation to pounds, or the case value to pounds?

A. The cases are 100-pound cases; they weigh about 100 pounds, that is, one dozen or case of canned goods. The gallon cases average about 100 pounds. In some sections they use a little heavier wood than in others, and there are some fruits that run a little heavier than some vegetables, but in shipping we usually estimate 100 pounds for one dozen case of gallon goods to cover all kinds, to average. It is a fair average weight. Table goods vary 50 per cent. in value on the same article. Of course, in the
2521 regular wholesale grocery stock the two articles that there is the largest trade in, that go all over the United States, are the three-pound can of tomatoes and the two-pound can of corn and peas, but there are so many others that enter into it; but peas, corn and tomatoes are the three articles that have the largest sale, and the railroad companies of course usually have to handle more of those goods.

Q. 29. Your house ships all these articles by rail, does it?

A. Yes.

Q. 30. In and out?

A. Both in and out, by rail and by rail-and-steam.

Q. 31. You know, do you, how all these articles are packed for shipment?

A. Yes.

Q. 32. And in what kind of packages and cases?

A. Yes.

Q. 33. Can you compare soap with the other articles mentioned, in its desirability as a freight article or an article for transportation by a railway?

A. Do you mean, how would I compare it?

Q. 34. Yes.

A. Well, laundry soap is very heavy, and I should call it desirable freight. It is not expensive goods, and it is goods that I should judge, not being a railroad man, there would be very little if ever complaint made for shortage or damage in transit;
2522 not near as much as there would be be in canned goods, for example, or in cereal goods. Canned goods are more liable to be broken and stolen in transit and eaten by tramps on the railroads. If a case breaks it is not so easy to take care of. I don't remember, in all our years of experience, that we have ever had a claim against a railroad company for damage to any laundry soap in transit to us from the factory or in shipment out. We have had loss, but no claim for damages owing to getting it injured in transportation.

Q. 35. In a classification of freight such as the Official Classification in operation between Chicago and New York, in which

coffee, sugar, candles and canned goods are in the 5th class with a rate of 30 cents between New York and Chicago, and where the 6th class of the same classification had a rate of 25 cents between New York and Chicago, what would your opinion be with reference to the question of the classification of soap with reference to these articles and those two classes?

A. I should regard soap, owing to its low value and ease of handling, fully as desirable for a cheap classification as any one of those articles. I should regard it cheaper than candles, better freight than candles, better freight than bag sugar; probably not as good freight as barrel sugar, because with barrel sugar there is less expense in handling and rolling; the men can move a car so much quicker than they can a car of soap. But the danger as to claims for loss in shipping on sugar would be very much greater than it would be for loss on transportation of soap, or canned goods either.

2523 Q. 36. Well, where coffee, sugar, candles and canned goods are in the 5th class, carload lots, and the cereal products and rice and starch are in the 6th class, where would you put soap, in your opinion? Where, in your opinion ought it to go?

A. Well, soap certainly should be as low a classification, in my opinion, as any of those articles.

(By Mr. BAYLESS:)

Q. 37. What kind of soap do you refer to?

Mr. MATTHEWS: Common laundry soap.

A. I speak of common laundry soap only. I have not brought up the question of toilet soap.

Q. 38. Are you acquainted with the competitive elements in the articles mentioned, including soap?

A. By that question what do you mean? Competition between manufacturers or between the dealers, the wholesalers?

Q. 39. No, between yourselves and the manufacturers of these various articles.

A. There is a very strong competition on all of them. I don't know as I can say that the competition between the soap manufacturers is any less or any more than the competition between the manufacturers of different cereal products.

Q. 40. You may state what the competition is between soap manufacturers.

A. Well, the soap trade is handled between the manufacturers and the wholesalers. It is handled very largely by direct shipment from the factory in lots of five boxes or more, a great

2524 deal more than it used to be a few years ago, and those orders are secured both by the manufacturer having men on the road who with some manufacturers sell direct and bill to the retailer. Other manufacturers have men on the road working up the trade all the time and fill their orders through the wholesale trade. And then the wholesale trade all of them have their agents out working for orders; and I don't know as the competition is any more sharp—I don't think it is any more sharp—now especially than it has been for the last five years. The competition on these

new brands of cereal goods of course, is very sharp. Any new manufacturer coming in has his men out, and they canvass very hard for trade and make all kinds of terms and deals to the trade to get his goods introduced, the same as any manufacturer of soap does when he gets out.

Q. 41. When the rates are advanced on these other articles except soap, do you know who has to pay eventually that advance in the freight rate?

A. The advance in the freight rate always comes out of the consumer.

Q. 42. How about soap?

A. I think it is no exception.

Q. 43. That is between the factory and yourself and the wholesale grocer or jobber?

A. There has been no change, to my knowledge, in which the manufacturer has given as a reason for an advance in soap
2525 on account of a change in freight rates, any new change in freights. There has been an advance in soap, but all the talk to the merchants has been, as far as I know, that it has been caused by the advance in the raw material entering into the manufacture of soap, and also in operation and labor.

Q. 44. Does the soap manufacturer prepay his freights?

A. It is prepaid.

Q. 45. How about the manufacturers of these other articles?

A. They are prepaid. Nearly all manufactured goods sold under proprietary brands handled in the wholesale grocery trade are sold at a uniform delivered price, irrespective of where the manufacturer is located. Any wholesale grocer east of the Mississippi River can buy goods coming from New York City just as cheap as the New York City jobber can buy them. But the New York City jobber will buy the same goods from the Mississippi River and — delivered at New York just as cheap as the Mississippi River jobber can buy them. They make a uniform delivered price, on nearly all proprietary brands handled in the grocery business.

Q. 46. Is that true of coffee, sugar and rice?

A. In rice the price is based not so particularly on it being a manufactured product, so there is no proprietary brand in that. Sugar is nominally based on the New York market, and the wholesaler pays the freight.

Q. 47. The wholesaler pays the freight on sugar?

A. The wholesaler pays the freight on sugar.

2526 Q. 48. How about coffee?

A. The same on coffee.

Q. 49. When the freight is advanced on coffee and sugar, then you, the wholesalers, pay that, don't you?

A. When it is advanced on those we pay it, yes. That is, to speak of coffee as an article of commerce. Of course there are proprietary brands of coffee on which they make a delivered price, irrespective of where the factory is located, but the difference in the freight is absorbed by the manufacturer. That is simply on package coffee.

Q. 50. How does the volume of sales in soap compare with that of candles, in your business?

A. Well, in packages it is about fifty to one, about fifty boxes of soap to one box of candles. Candles, however, are in 20-pound and 40-pound boxes, while soaps run from 60 to 75 pounds to the box, so the tonnage is more marked than on the package basis.

Q. 51. How does the volume of sales in soap compare with that of starch?

A. About four and a quarter boxes of soap to one of starch. That is, laundry soap.

Q. 52. Yes, when I mention soap here I mean laundry soap only.

A. I am speaking of laundry soap.

2527 Cross-examination.

By Mr. MAXWELL:

Q. 53. Do you deal in the soaps manufactured by the Procter & Gamble Company?

A. Yes.

Q. 54. What classes of soaps?

A. Well, all the soap that we handle of theirs is laundry soap. If they make a toilet soap, we do not handle it. We classify Ivory soap as a laundry soap. That is the only soap that might be classed as a toilet; a white soap, in other words.

Q. 55. Do you deal in their Ivory soap?

A. Yes, sir.

Q. 56. And that you class as a laundry soap?

A. That is a laundry soap, yes.

Q. 57. What is the price of that?

A. There are two sizes of cakes. One size we sell at $6.75 per 100 cakes, and the other we sell at $4.00 per 100. That is 6¾ cents a bar and 4 cents a bar?

Q. 58. What is that per pound?

A. The large cake is a 10-ounce cake and the small cake is a 6-ounce cake. They are neither of them a pound. That would be 8 cents a pound for the small size.

Q. 59. And for the large size?

A. The large size is 6¾ cents for the 10-ounce cake.

Q. 60. That is the selling price. Can you tell us for our convenience what that would be a pound?

A. I can figure it out here by the ounce very quickly.

2528 (After making a calculation): That would be nearly 10 cents a pound.

Q. 61. What proportions of these two sizes do you sell?

A. I have never compared the percentage, but I think we sell about—my judgment would be that we sell about one box of the two sizes combined—that is, calling them both the same thing,—we sell about one box of those to four boxes of the other kinds of soap that they make. That would be one-fifth Ivory.

Q. 62. Then what is the average price of Procter & Gamble's soap that you deal in?

A. I can tell that by figuring it up. I would have to get the brands. You see, we get some soap for $1.70 a box. The one cake that we sell most of we get for about 3½ cents a pound, that we sell more boxes of than any other brand. They have some that run down as low as $1.70 a box of 100 cakes, but they are not pound bars. I don't know; they are 8 or 9 or 10-ounces.

Q. 63. Then you are not able to give us the average price of Procter & Gamble's soap that you sell?

A. No, I could not give you the average price of this soap. I can give you the average price of all the laundry soaps that we sell, but not Procter & Gamble's alone, because I did not figure it out. I simply got the amount in dollars that we sold in a year of all soaps, all the different makes, the number of boxes, and then figured it down that way. That would be about 3¾ cents for the average of all soap that we handle, not referring to any one manufacturer's

2529 brand.

Q. 64. Well, I want to get at the average price of Procter & Gamble's soap.

A. Procter & Gamble's make, I couldn't give you that. If I had one of their price lists I could come near to it.

Q. 65. Can you give it approximately?

A. You see, on those cheaper soaps it is simply guesswork as to the weight of the bars. They sell soaps at $1.70 a box with 100 cakes in. Now, it depends entirely on the weight of those cakes. If it is 8 or 10 ounces it makes a difference in the value of those. One of his big selling brands, the Lenox, is 3½ a pound. They sell more of that than any other one brand. But that of course would bring it down. That is a laundry soap. These are all laundry soaps. I could only tell, of course, by having a list and looking over and seeing what we bought, and figuring up that way. Otherwise it would be more guesswork, and any of you could guess at that just as well as I could. It runs from $1.70 by the box up to $3.75, except these two brands of Ivory soap, and it would depend of course on what proportion they sold of those goods and what the weights of those cakes are, as to what would be the average price per pound.

Q. 66. Then you are not able to say that the average price of the Procter & Gamble soaps which you sell is such as to make any unjust discrimination in placing them with any of the articles that have been mentioned to you, are you?

2530 Mr. MATTHEWS: I object to that, because it is not Procter & Gamble's soaps alone that are in controversy in this proceeding, but all soaps of all makes.

A. I am not prepared to give the value of the soaps in answer to the question, to say that it would be an unjust discrimination either for or against it.

Mr. MAXWELL:

Q. 67. Do you know what other soaps the Procter & Gamble Company make beside those in which you deal?

A. They make quite a number of brands that are not handled in

this market. They are localized within certain sections of the country, where they handle certain brands of soap.

Q. 68. What grade are those?

A. Well, they run all the way from $4.25 down to $1.70 a box.

Q. 69. Can you give us the price of that in pounds?

A. That I cannot give you in pounds. If I had a list here giving specifically the pounds and brands, I could come pretty close to it. I know pretty near as to what brands we handle. I can only answer as to what we handle. I can't say what the others do, but out trade would probably be a fair statement of what other grocers here in Chicago would handle, and in this market. But what they handle in Cincinnati and the South or West I don't know. They handle different brands from what we handle here, very largely.

Q. 70. Do you sell any of the brands of Procter & Gamble's soap in which you deal, for a toilet soap?

2531 A. No, sir.

Q. 71. Do you know whether they do sell any of their brands for toilet soap?

Mr. MATTHEWS: I object.

A. Well, not to my knowledge.

Mr. MAXWELL:

Q. 72. Do you mean that you do not have any knowledge about it?

A. I don't know of their making any toilet soap or selling any for toilet soap.

Q. 73. Do you know how they advertise their soap, whether for toilet soap or not?

A. That I cannot say. I think they advertise the laundry soap as both for toilet and laundry; "Good for toilet, laundry and bath," I think the advertisement reads. You will find it in about every magazine in the country.

Q. 74. Do you know anything about the profits of Procter & Gamble in the manufacture of this soap?

A. I do not.

Q. 75. Do you know anything about their profits as compared with the profits of dealers in rice and starch and cereal products?

A. I do not.

Q. 76. Or with respect to a comparison of profits of dealers in sugar, starch and coffee?

A. As to their profits?

2532 Q. 77. Yes.

A. I do not know anything about their profits.

Q. 78. Are you able to give us the average price of all soaps?

A. The average price of the soaps that we handled in the year 1899, all soaps—that is, all laundry soaps——

Q. 79. I am not asking you about laundry soaps. I am asking you about all soaps.

A. No.

Q. 80. Because all soaps are put in the same classification in Official Classification No. 20.

A. No.

Q. 81. I want to know from you, if you can tell us, the average price of all soaps.

A. I could not tell you the average price of all soaps, because I did not look the matter up and did not get any figures, although of course the sale of laundry soap is very heavy, in both dollars and cents, as compared with the sale of toilet soaps.

Q. 82. Sale by whom?

A. By the wholesale grocers.

Q. 82. Do you know anything about the average of sales generally, taking dealers other than wholesale grocers?

A. I do not know. Most toilet soaps are distributed either through the wholesale grocer or through the manufacturer where
2533 they go direct to the retail trade. You know, some manufacturers go direct to the retail trade, while others distribute their products all through the wholesale grocers.

Q. 83. Then you are not able to tell us the average price of soap generally?

A. Not of all soaps, no, sir.

Q. 84. Nor to compare the average price of soaps generally with the average price of sugar, starch, rice and canned goods?

A. I can state the average price of what we handle; but what is handled all over the United States, I would not try to answer that question, no, sir.

Q. 85. Have you a list of prices of Procter & Gamble's soap?

A. I have not. I just asked the gentleman if he had the list with him, a short time ago when you asked me for values, so that I could state, but he had none.

Q. 86. Has there been an advance in the price of laundry soaps recently, and when?

A. I could not tell without looking up the dates. We have had; in the last six months there has been two advances in laundry soap. Some manufacturers have advanced twice, and some have only advanced once, but the majority of the manufacturers, I think, have made two advances in the last six months.

Q. 87. Can you give us the dates?

A. I could not. Of course I didn't impress it on my mind. There has been no advance in soaps that I know of within the
2534 last sixty days. It was longer ago than that that they advanced, as my memory serves me.

Q. 88. Was it since the first of January?

A. There was a change right after the first of January, as I remember. Then there was a change along in the fall.

Q. 89. What was the advance that was made about the first of January?

A. There was an average advance of about a quarter of a cent a pound on soap.

Q. 90. On laundry soaps?

A. On laundry soaps. They run from 15 cents a box up, according to the weight of the box, whether a 60-pound box or a 75-pound box.

Q. 91. Have Procter & Gamble made an advance?

A. I think they made an advance on some of their grades, but not all. On some of their brands of soap that we are speaking of, especially on Ivory soap, there has been no change in that for years; it has always been one price.

Q. 92. On laundry soap?

A. On the Ivory brand of laundry soap. Some of his other brands there has been an advance on.

Q. 933. What other brands?

A. There has been an advance on Lenox, of which I say we sell more than any other one brand. There has been an advance on that brand. I am not sure whether one or two, but there has
2535 certainly been one in the last six months. His All Ready brand is another brand that I remember an advance on. I think there has been an advance on the Mottled German brand. That is another brand of which we sell considerable here. On some of the other brands there has been no change.

Redirect examination.

By Mr. MATTHEWS:

Q. 94. Are not your sales of Lenox soap greater than the sales on all the rest of Procter & Gamble's brands put together?

A. I can't say that without looking up the orders. As I say, I think we sell more of the Lenox soap than of all the others put together, but as I say, I wouldn't say positively without looking up the orders. That is the leading brand, the Lenox brand.

Q. 95. Now, is it not a fact that there was one advance of 15 cents a box on the Lenox soap about January 13th?

A. I couldn't tell you that without looking up the date. I say I think there has been one advance since January on Procter & Gamble's soaps. Most of the soaps advanced more sharply in the fall, before the first of January. I know that we had two different advances on Johnson's, in Milwaukee, inside of thirty days last fall.

2536 Q. 96. Has there been any advance in starch?

A. Yes, sir.

Q. 97. Will you state what that is?

A. There has been an advance in bulk starch from 1⅞ up to 3⅛, in bulk, 50-pound boxes or barrels.

Q. 98. You mean from 1⅞ to 3⅛ per pound?

A. From 1⅞ per pound up to 3⅛.

2537 CHARLES A. JENNINGS.

The said CHARLES A. JENNINGS, of lawful age, being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows:

Direct examination by Mr. MATTHEWS:

Question 1. State your name, residence and occupation.

Answer. Charles A. Jennings. Chicago is my residence. I am manager of the transportation department of the American Cotton Oil Company.

Q. 2. What connection have you, if any, with the Fairbank Soap Company of Chicago?

A. The N. K. Fairbank Company being a part of the American Cotton Oil Company, my jurisdiction extends to their plant and the management of their traffic affairs.

Q. 3. How long have you been connected in that capacity with the N. K. Fairbank Soap Company?

A. At one place and another, nearly sixteen years.

Q. 4. Have you been manager of their transportation department during that time?

A. At St. Louis, yes. At the same time I was manager of their sales department for a number of years.

Q. 5. You are cognizant, of course, of the fact of the change made In classification, on or about January 1st, 1900, in common soap in carload lots from 6th to 5th class, and in less than carload
2538 lots from 4th to 20 per cent. less than 3rd class in the official classification, are you?

A. I am, yes.

Q. 6. Please state whether or not the N. K. Fairbank Company is satisfied with that change.

A. We are not satisfied with the present status of the classification of soap, either in car lots or less than car lots. The details of our dissatisfaction may be better seen embodied and represented in an argument that I made in New York on January 22nd, I think. That argument embodies the ideas of the N. K. Fairbank Company.

Q. 7. Before whom was that argument made?

A. The general conference of the railroad men and shippers. I believe that was termed a conference, was it not, Mr. Tucker?

Q. 8. The N. K. Fairbank Company is a manufacturer of soap in Chicago, I believe.

A. In Chicago, St. Louis and New York.

Q. 9. It is a large concern, is it?

A. Comparatively, yes.

Q. 10. Compared with other soap companies in the same business?

A. Yes, sir.

Q. 11. And, just in a general way, with what other large companies does it come into competition in the sale of its products?

A. With practically all of the large companies doing business in the entire country, and with the smaller companies as well.
2539 Our business is extensive. It is carried on in every State of the Union, and practically every soap manufacturer is our competitor. I will modify that and say every common laundry soap manufacturer. We do not manufacture toilet soap.

Q. 12. What are the prices of common or laundry soap now as compared with those in 1887?

A. Do you mean in comparison with brands or in comparison with prices on the same brands?

Q. 13. I mean in comparison with prices on the same brands.

A. Well, they are very much less now than they were at that time.

Q. 14. Can you give an illustration from some particular brand of your own?

A. Well, our leading brand is Santa Claus. In 1887 we were getting $3.75 a box as jobber's cost. I think our price is something like $2.60 and $2.65 now for the same identical soap.

Q. 15. Are the difference: the same on other brands?

A. Approximately so, yes.

Q. 16. There has been a recent advance in prices on common soap, has there not?

A. There has been a slight advance, I believe. In fact, I know there has.

Q. 17. About how much?

A. Just how much I do not know. It certainly is not to exceed 25 cents a box, and I think that taking the line of all the brands, it will not average more than 15 cents a box. Some we are able
2540 to advance further than others. I suppose you find that in your experience. All soap makers find it in their experience.

Q. 18. Has there been a recent advance in the price of raw material of common soap?

A. Yes. Take tallow, which is a very important soap base, it has recently been more expensive than the manufactured product itself. Tallow has been almost a paradox, and more expensive than some of the edible fats, and more costly, for instance, than prime steam lard, although they use tallow for adulterating purposes. Cotton seed oil has almost doubled itself in value, comparing this year with last. Last year cotton seed oil in Texas could be bought for 14½ to 16 cents a gallon. It is worth anywhere from 28½ to 30½ cents a gallon to-day.

Q. 19. Has the recent advance in the price of common soap to which you have testified been sufficient to cover the increased cost of the materials?

A. I do not think that the advance in soap has been anywhere near commensurate with the advance in materials, no.

Q. 20. How does the price of tallow compare now with what it was ten years ago?

A. I cannot say. I have the opinion, though, that at that time it was not any more expensive than it is now. However, I am not definitely posted on that subject.

Q. 21. In a general way, Mr. Jennings, what is the state of the soap business in this country to-day in regard to competi-
2541 tion?

A. Well, I have found it to be one of the most competitive businesses that I have ever observed anywhere. Every little factory is a competitor, and every one, even if it be but a housewife who manufactures her own soap, is our competitor. In the South especially, cotton seed oil mills are springing up like mushrooms, and nearly all of them are putting a refinery adjunct to their crude establishment. In the refining of oil there is a certain amount of soap stock precipitated and partially saponified, and they are all resolving themselves into soap factories. Every little factory at every little town is a pace-maker for a big manufacturer who wants to get out and do a widespread business. I consider it as ultra-competitive.

Q. 22. You may state whether or not there is a possibility of any widespread distribution of soap from one factory except on minimum freight rates.

A. There is a possibility of a widespread distribution but there is not a probability of any very great element of profit in so doing. The increasing of rates on soap in either quantity carload or less than car loads has only a tendency to restrict the widespread distribution, in my estimation, and I may say, according to my experience.

Q. 23. Is it possible in the soap business to increase the price of the soap so as to absorb the increased transportation cost?

A. It is possible, yes. It is a question, though, whether
2542 you will be able to place your soap if you increase your price.

Q. 24. Well, when you sell soap in Buffalo, for instance, do you or do you not have to leave out of account entirely the freight rate from here to Buffalo in fixing the price of your product there?

A. Oh, no, the freight rate is always part of the price, no matter where we sell, with the exception, of course, of our local city trade. Wherever we freight goods, the price is to a certain extent predicated on the freight rate.

Q. 25. What effect does the soap maker in Buffalo have? The price fixed by him, what effect does that have upon your price, if any?

A. It is, as I have said before, more or less of a pace-maker, the local manufacturer's price. We must be governed to a very large extent by it in offering the same class of goods.

Q. 26. The presence, however, of the manufacturer in Buffalo, for instance, prevents you from increasing your price at Buffalo sufficiently to absorb entirely the increased transportation cost to Buffalo?

Mr. BAYLESS: I object to that form of examining your own witness, Mr. Matthews. It is suggestive.

Mr. MATTHEWS: Well, I will withdraw the question, then.

Q. 27. You may state what if any effect the presence of the manufacturer in Buffalo has upon your being able to absorb en-
2543 tirely the increased transportation cost from Chicago to Buffalo?

A. Hasn't that question been answered generally before? The fact that he is there makes it apparent that the competition is keener. The fact that he is there, without any freight to pay, and we are here, with a considerable item of freight to pay, adds that much to the competition, and we generally have to do more or less shrinking in order to meet competition as we find it there; and by shrinkage I mean the absorption of freight charges; probably not wholly, but in part.

Q. 28. What do you think as to the desirability of common soap as an article of freight?

A. I can hardly imagine a more desirable article unless it would be bulk grain or something on that order. Soap is very compact. I think we have figured it out to weigh either 43 or 47 pounds to the

cubic foot. It can be loaded to any car's full capacity, and its range of value being low, say from two to four cents a pound, it does not carry with it much responsibility to the transportation companies in transporting it; and on the whole I consider it and have always argued too that it was a very desirable article of traffic.

Q. 29. Has the N. K. Fairbank Company ever had any claims for damages against the railroads on account of damage to soap in transportation?

A. Oh, yes.

Q. 30. Of what nature have they been?

2544 A. Well, we have had damages occasioned by wrecks, and we have had at one time or another damage occasioned by water. I remember that recently we had some soap loaded into a refrigerator car that the ice box had not been emptied, and it struck a warm spell and they overflowed and damaged the soap to a slight extent, probably to the value of the wrappers and the unpacking and working over of the soap again. The soap in itself was not greatly damages, except it was not presentable to the trade.

Cross-examination.

By Mr. MAXWELL:

Q. 31. What kind of soap does your concern manufacture?

A. Common laundry soap.

Q. 32. Nothing else?

A. No, we do not manufacture toilet soaps.

Q. 33. What is the price of your soap?

A. Well, we have various prices, ranging I should say from 2 to probably 6 cents a pound. We have one or two white soaps. They are, however, a very small proportion of our general business. Our common laundry soaps, though, will be within a range of 2 to 4 cents a pound.

Q. 34. Do you know what the average price of all soaps is?

A. I do not know that I quite comprehend your question, sir. What do you mean by "all soaps"?

2545 Q. 35. Class 5 of Official Classification 20, as I understand, includes all soap.

A. Toilet as well as laundry?

Q. 36. Yes.

A. I have a general idea of the range of values.

Q. 37. What is the range?

A. Well, taking 2 cents a pound as a minimum, I have seen toilet soaps that were worth 25 cents an ounce.

Q. 38. Then the range is between those two prices?

A. It must necessarily be.

Q. 39. Is the soap business profitable?

A. We are in it. It has been.

Q. 40. Is it now?

A. I suppose so.

Q. 41. I would like to have some idea of the profits of the soap business. Is your concern a corporation?

A. It is.

Q. 42. Is the department of the concern which is engaged in the manufacture and sale of soaps, separate?

A. No, not that I know of. Our profits are not departmentized, if you will allow the expression.

Q. 43. I want to know if there is any way by which you can tell us the profits.

A. There is probably a way, but I have not the figures at hand.

2546 Q. 44. You cannot tell us, then, what the profits of your soap business is?

A. Not of our soap department, no.

Q. 45. Do you know about the profits of the Procter & Gamble Company?

A. I do not.

Q. 46. Do you know what dividends they pay on their stock?

A. I do not.

Q. 47. Do you know how profitable the manufacture of soap is to the Procter & Gamble Company?

A. I do not.

Q. 48. Well, have you any information by which you can give us a statement as to the profits of the soap business in the United States?

A. No, sir, I have not.

Q. 49. Do you know what soaps Procter & Gamble make?

A. I think I am acquainted with their leading brands, or some of them.

Q. 50. What class of soaps do they make?

A. They are what we term common laundry soaps, as far as I know.

Q. 51. Nothing else?

A. Not that I know of.

Q. 52. Do you know what they get for their Ivory soap?

A. Why, approximately.

2547 Q. 53. What?

A. Let us see, Ivory is packed as 37½, is it not? My best recollection of their prices is that they have got about $6.50 for a 75-pound box of Ivory, and about $3.75 for a 37½ pound box. I think they have been taking less than that recently. That was some time ago.

Q. 54. Then that is from 8 to 10 cents a pound, is it not?

A. Yes. Those are old-time figures.

Q. 55. Do you know what their present figures are?

A. I do not.

Q. 56. Has the cost of producing soap been changed within the last few years, by improvements in processes of manufacture?

A. There have been economies, yes, in the manufacture of soap.

Q. 57. To what extent?

A. I cannot answer specifically as to how great have been the economies or to what extent or what percentage.

Q. 58. What is the rate on soap between New York and Chicago?

A. To-day it is 30 cents in carloads, and 20 per cent. less than 3rd—35 in less than carloads, or 40 I think in less than carload lots.

Q. 59. Then carload lots would be $1.50 for 500 pounds.
A. $1.50 for 500 pounds, yes.
Q. 60. Do you think that is an unreasonable rate?
A. Yes, sir.
2548 Q. 61. On what ground do you base that opinion?
A. Why, on the ground of comparison. We can load a car of soap as heavily as the car can carry, and we are paying twice as much as some other commodities which you are handling down there. I am free to admit that the other commodities which you are handling say at a 15 cent rate can be handled more economically, but I think not to the extent of 15 cents a 100. I believe that there have been as many economies in the transportation of goods as there have been in the manufacture of soap. I believe if in 1887 you could haul soap at 25 cents a 100 to New York, you can in 1900.
Q. 62. Lay aside the ground of comparison which is the one that you have just stated, and answer me upon what ground if any you claim that a charge of 30 cents a 100 on soap between New York and Chicago is unreasonable.

Mr. MATTHEWS: I object on the ground that the question is irrelevant to the subject of the inquiry, as the question of comparison cannot be eliminated from it. What are you referring to? 30 cents a 100 in less than carload lots?
Mr. MAXWELL: The witness knows.
Mr. BAYLESS: He has stated.

A. We have set up a claim that we think soap is entitled to the minimum established class rate, because of its cheapness, its density and its full loading capacity.

Mr. MAXWELL:

Q. 63. I understand that you make that claim in compar-
2549 ing soap with some articles which are still in the 6th class. What I want to know from you is whether you have any information with respect to the cost of transportation which would justify you in holding the opinion that the charge of 30 cents between New York and Chicago is unreasonable.
A. I have stated one comparative case. I have stated the facts as they occur to me, allowing soap as a tub to stand on its own bottom. You have a 4th class rate and a 6th class rate, our understanding being that the 4th class is the minimum for less than carload shipments of manufactured articles, and that 6th class is the recognized minimum—or that 6th class is the minimum rate for any kind of articles outside of commodity rates; and the argument that I make is that the qualities of soap together with its price warrant these minimum rates. That is a claim established on the qualities of soap itself, without necessarily any comparison with anything else.
Q. 64. I understand that you are making the claim that soap should be carried at the same rate as some articles that are included in the 6th class. It may be that those articles are carried at less than the cost ought to bear. What I want to know from you is

whether you have any information with reference to the cost of the transportation of soap that would justify you in claiming that 30 cents between New York and Chicago is an unreasonable rate.

Mr. MATTHEWS: I object to that for the same reason as before.

2550 A. If you are asking the question eliminating comparison, you are asking an impossible question.

Mr. MAXWELL:

Q. 65. Will you kindly permit me to ask the questions, and answer them to the best of your ability? If you cannot answer my question, say so.

A. I have answered that question. I say that to me it is an impossible question.

Q. 66. Why?

A. Because I cannot answer it.

Q. 67. Then you do not know that, taking into consideration the cost of transportation, the rate of 30 cents between New York and Chicago is unreasonable, do you?

A. Outside of the answers that I have made, no.

Q. 68. What particular article or articles in the 6th class do you have in mind in claiming that soap should be charged no more than they?

A. I do not believe that I have stated that I had any particular article or articles in mind. I have made no specific comparisons. I have simply referred to the 6th class rate as a minimum rate.

Q. 69. Then your claim is that soap ought to be carried as cheap as any article that is carried?

A. I think so.

Q. 70. And that is the ground of your objection to this classification?

A. Yes.

2551 Q. 71. Do you recognize the right of the railroads to make an increase in their freight rates at the present time?

A. I certainly do. We have submitted to their right, and we are paying the increased freight rate, but at present we are protesting and trying to see if arguments will avail.

Q. 72. The Classification Committee gave you a careful hearing, didn't they?

A. They did.

Q. 73. And other shippers who had views to present were also heard, were they not?

A. They were.

Q. 74. Now, recurring to my question, do you recognize that the conditions are such that the railroad companies are justified in increasing their freight rates at the present time over what they were a year ago?

Mr. MATTHEWS: I object to that question on the ground of irrelevancy.

A. I recognize the right of any institution to run their own business, private or corporate.

Mr. MAXWELL:

Q. 75. Do you realize that the cost of railroad transportation has been increased within the past year?

A. I should imagine it has been.

Q. 76. Yo are aware, I suppose, that the cost of equipment and of rails has increased largely during the past year.

2552 A. I know the cost of equipment has, and I also can realize that wages as well as supplies generally have increased.

Q. 77. How do you expect the railroads to meet that increased cost in transportation except by increasing rates?

A. By securing more revenue.

Q. 78. How are they to secure more revenue except by increasing the rates?

A. I might suggest, by maintaining them.

Q. 79. Have the rates on soap been maintained?

A. So far as I know, yes.

Q. 80. Then don't you recognize the right of the railroad companies, in view of the increase at the present time over what it was a year ago in the cost of transporting soap, to increase the charge for carrying soap?

A. Well, that brings up the question of whether or not there have not been a great many economies in the transportation of not only soap, but all other articles, since this basis of rates or original basis of rates was established.

Q. 81. What do you know on that subject that would justify you in resisting a claim of the railroad companies to increase the charges for transportation over those which prevailed a year ago?

A. Well, my knowledge is of course very largely causal and very largely hearsay. I believe that the proportion of operating expenses to general revenue has been reduced right along,

2253 has it not?

Q. 82. Is that your information?

A. That is my information.

Q. 83. Since when? From what time?

A. There has been a general gradual reduction, according to my information, in the percentage of operating expense.

Q. 84. Since what time?

A. Well, I will say since 1887.

Q. 85. Don't you know that there has been a very large increase in the cost of transportation within the past year?

A. As compared with when?

Q. 86. I say, within the past year.

A. Naturally.

Q. 87. You know that, don't you?

A. Yes, but whether that entirely offsets the economies that have been developed, I do not know.

Q. 88. Do you know of any economies that have been developed during the past year to offset the very heavy increase in the cost of transportation during the same period?

A. No, I do not, within the last year.

Q. 89. Then is it not your understanding that the cost of transportation to-day is very much greater than it was a year ago?

A. I so understand, yes.

Q. 90. And so understanding, do you deny the right of the railroad companies to charge more to-day for carrying soap than
2554 they charged a year ago?

A. I have never denied that right.

Cross-examination.

By Mr. BAYLESS:

Q. 91. Whom did you represent before the Classification Committee in New York? The Fairbank Company alone, or others?

A. There were a number of other manufacturers that I represented. I can give you the exact list if you desire it.

Q. 92. I do not care for that. But covering what territory, Chicago alone or other territory?

A. The territory in this—that is, the territory covered by the official classification.

Q. 93. The entire territory, or the western part of it?

A. No, the eastern and western as well. We did not have all of the soap manufacturers represented, but we had factories from New York, Philadelphia, Buffalo, Chicago, St. Louis; Jackson, Michigan; Zanesville, Ohio; and several other points; I have forgotten all of them.

Q. 94. You went into an examination of this matter very thoroughly for the purpose of presenting the views of the soap manufacturers to the Classification Committee at that time, did you not?

A. I did.

Q. 95. You delivered quite a lengthy argument or address
2555 to the Classification Committee, presenting your views.

A. Not particularly lengthy. I presented an argument there.

Q. 96. Is it not a fact that the Ivory soap manufactured by the Procter & Gamble Company is a high-grade laundry soap? That is, I mean a high-priced grade compared with the ordinary grades of laundry soap.

A. It is higher in price than the ordinary grade of laundry soaps, if you wish to disassociate it from the laundry soap category.

Q. 97. How does the Ivory soap compare with your brand of Santa Claus in price?

A. It is a higher priced soap. How much higher I cannot say.

Q. 98. Is it not a fact that the Procter & Gamble Company advertise the Ivory soap both as laundry and fancy or toilet soap?

A. I do not know how they advertise it.

Q. 99. Do you know that it is advertised simply as a laundry soap?

A. I do not know, I say, how they advertise it.

Q. 100. You don't know?

A. No.

Q. 101. You have not seen the magazines where it has been advertised as a fancy soap or toilet soap?

A. I have not noticed it, no, sir. I can answer that very truthfully. I am not very much of an advertisement reader.

Q. 102. You speak of the competition in the manuacture of soap, and the fact that there are small institutions that you have
2556 to compete with as well as larger ones. Isn't that true of the business as to all manufactured articles, that the same elements of competition exist, large institutions as well as small?

A. I do not know. I can well imagine that it may be; that the manufacturer of every article may have more or less competition. I think we have more competition as a manufacturer of soap than almost any other one article of domestic use.

Q. 103. You are, of course, more familiar with the competition in the manufacture of soap than you are in other departments of industry.

A. Naturally.

Q. 104. How does the price of soap compare now with what it was a year ago? Is it not higher?

A. It is slightly in advance. The prices to-day are slightly in advance of what they were a year ago.

Q. 105. Well, isn't the advance fully as great in the price of soap as the advance that has been made by this classification, or more?

A. Oh, the advance in the price of soap to-day as compared with a year ago has been more. But in answering that question you do not want to overlook the fact that the price of material is considerably more.

Q. 106. Yes. Well, haven't the prices of materials that are necessary to furnish supplies for the operation of a railroad materially increased?

2557 A. My understanding is that they have.

Q. 107. Do you know that car wheels have increased during the last year more than a hundred per cent.?

A. I do not. I can imagine that they have increased, though.

Q. 108. You know, however, that all iron products have increased very greatly?

A. I do.

Q. 109. And railroad ties?

A. As to ties I am not informed.

Q. 110. Do you know that locomotives now cost from 25 to 35 per cent. more than they did a year ago?

A. I can very readily accept that statement.

Q. 111. Then aren't the increases in the supplies to be furnished by the railroad companies greater in proportion than the increase in the material used in the manufacture of soap?

A. I think not.

Q. 112. Have the ingredients put into your manufacture of soap increased in the same great proportion that iron has, in this country, and railroad supplies? What is your understanding about that?

A. My understanding is that there have been very radical increases in both. You predicate your ideas on iron, which has about

doubled itself in value. We can predicate our ideas on cotton seed oil, for instance, an element that has doubled itself in value,
2558 and on tallow, which is very much more expensive to-day than it was a year ago. There may be a long list of items in the manufacture of soap which have increased slightly, but to bring it down to a general average and to make a general average of your increases and thus compare them, I cannot say just what the relation would be.

Redirect examination.

By Mr. MATTHEWS:

Q. 113. Mr. Jennings, do you know whether the cost of operation of railroads has increased within this year over what it was in 1890, say?

A. I do not know it, no.

Q. 114. Isn't your state of knowledge in regard to the last question about the same as what it is in regard to the increase within the past year to which you have testified in answer to Mr. Maxwell?

Mr. BAYLESS: I object to that question. It calls upon the witness to make a comparison.

A. May I ask for my answer to Mr. Maxwell?

Mr. MATTHEWS: I will withdraw that question and put another one.

Q. 115. You answered, as I understand it, to Mr. Maxwell that there had been a considerable increase, as you understood, in cost of operation of railroads within the past year. I will ask you now to state, if you know, whether or not this increase is an in-
2559 crease over what the cost of operation of the railroads was in 1890.

A. I do not know it. I should say, however, that it would be toward an increase. My impression is that there would be an increase in the cost of operation over 1890.

Q. 116. You were asked to compare the price of your brand of Santa Claus soap with Procter & Gamble Company's brand of Ivory soap. Do you make a brand of soap that is to all intents and purposes the same as Ivory soap?

A. We make a brand on the order of Ivory; that is to say, a white floating soap.

Q. 117. And about what prices do you get for that soap, as compared with the price of Ivory soap?

A. Very nearly the same; not quite so much as for Ivory. That however, is a very small percentage of our business.

Q. 118. You may state whether or not all the principal manufacturers of laundry soap make a similar soap to your Fairy soap and to the Procter & Gamble Company's Ivory soap, and whether or not it is or is not considered a brand of laundry soap in the trade.

A. Nearly all, I think, do. There may be some exceptions. Our Fairy and Kirk's White Cloud and your Ivory are generally classified along with common laundry soaps, and to my knowledge are are so used.

2560 Recross examination.

By Mr. MAXWELL:

Q. 119. Were you solicited to join in the application to the Interstate Commerce Commission?

A. By whom?

Q. 120. By anybody.

A. By anybody——

Q. 121. Yes.

A. In this case?

Q. 122. To enjoin the railroads from charging 5th class rates on soap.

A. No, I do not believe that we were solicited to join a movement of that kind.

Q. 123. Are you interested at all in this proceeding with the Procter & Gamble Company?

A. Not all. I am here as a subpœnaed witness, not a voluntary one. I wish to modify a former answer. My idea in answering Question No. 115 was that the recent radical increases in the cost of various materials would have a tendency to increase the cost of operation in 1900 as compared with the cost of operation in 1890, but I do not know that economies effected in the transportation of goods in the interim of ten years do not wholly or in part offset this.

2561 WALTER W. DODGE.

The said WALTER W. DODGE, of lawful age, being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows:

Direct examination by Mr. MATTHEWS:

Question 1. Please state your name, residence and occupation.

A. Walter W. Dodge. Chicago. Manager of the transportation department of Sprague, Warner & Company.

Q. 2. What is the business of Sprague, Warner & Company?

A. Wholesale grocers.

Q. 3. What is the character of their business as to size, generally speaking?

A. It is generally considered the largest house of its kind in the United States.

Q. 4. How long have you been connected with that house altogether?

A. Twenty-one years.

Q. 5. How long in the capacity of manager of its transportation department?

A. Eleven years.

Q. 6. Your house handles common soap, I suppose?

A. Yes, sir, soaps of all kinds, common and fancy or toilet.

Q. 7. Do you handle coffee, sugars, starch, rice, cereal products, candles and canned goods?

A. We do.

2562 Q. 8. Do you come in contact with all of these articles in transportation in and out for the firm?

A. Yes, sir. I see to the handling of them both in and out, and tend to the checking of freight rates on the items, both in and out.

Q. 9. Do you come in contact with the various railways which center at Chicago, in connection with the transportation of these articles?

A. Yes, sir, I meet their representatives nearly daily.

Q. 10. What is your opinion as to the desirability of common or laundry soap as an article of freight in comparison with the articles which I have mentioned to you?

A. I believe it to be more desirable than most of them, and fully as desirable as any one which you have mentioned.

Q. 11. Upon what do you base this opinion, Mr. Dodge; upon what facts connected with the articles?

A. First, upon the small risk of the railway people from damage to the goods as compared with the others which you have mentioned. Secondly, the weight and compactness of the packages and the ease with which they are handled, loaded and unloaded, and their weight as compared with the bulk of the other goods, making it more desirable, in my opinion, than many of the others; and, as partly stated at first, the less liability to damage on account of the character of the goods, they being less sensitive to the elements and to

2563 contact with other freight being shipped in the same cars than are such articles as coffee or sugar, or even cereals.

Q. 12. You may state whether or not the nature of the package in which the article is generally shipped has any effect upon your opinion in this regard.

A. It has to some extent. The boxes in which the soap is usually packed are of material which is not easily breakable or not easily split, whereas many other kinds of goods, notably canned goods, are packed in cases which do break easily, thereby making the risk of loss from transportation greater. But soap is packed in boxes made of material which holds the nails, and I can say from my experience that I do not recollect within the past eleven years of a single claim which we have had against any railroad company for damage or loss of soap occasioned by breakage of boxes.

Q. 13. How does the volume of sales of common soap compare in your business with the volume of sales of the other articles mentioned?

A. Will you be kind enough to read that complete list?

Q. 14. Coffee, sugar, starch, rice, cereal products, candles and canned goods.

A. I should judge that the volume of soap sales would exceed that of any of the articles mentioned, with the exception of the sugar and canned goods.

Q. 15. Sugar and canned goods?

2564 A. Yes, sir. It would be greatly in excess of many of the items mentioned; for instance, coffee or candles or starch; probably ten times as great as either candles or starch.

Q. 16. What if anything do you know about competition in the soap business?

A. I know that there is a great deal of competition, and that it is very keen and sharp. We purchase soaps from very many manufacturers in various parts of the country.

Q. 17. What, if anything, have the local manufacturers in Chicago to do with fixing the price at which manufacturers at other parts of the country can sell to you here in Chicago?

A. There is nothing that I know of that will regulate it. Will you please read that question again?

(Question read.)

A. They have nothing to do with the value whatever.

Q. 18. Would the manufacturers in other parts of the country be able to sell here in Chicago if their prices were materially higher than the prices of the manufacturers at Chicago?

A. They certainly would not be able to sell in Chicago goods of the same quality if their prices were higher.

Cross examination.

By Mr. MAXWELL:

Q. 19. Are you familiar with the changes that have been made by Classification No. 20?

2565 A. Somewhat familiar. The changes having gone into effect only a short time ago, that is, a comparatively short time, I have not become fully familiar with all of the changes.

Q. 20. Have you made a comprehensive study of them?

A. I have not, sir.

Q. 21. Do you recognize the propriety of an increase by the railroad companies of freight rates on account of the recent increase in the cost of supplies and materials and cost of transportation to them?

Mr. MATTHEWS: I object to that question on the ground of irrelevancy and want of qualification of the witness.

A. I believe the railway people have a right to advance their rates within certain reasonable limits, and if, as is generally understood, the cost of railway supplies and equipment is greater than within the last few years, their revenue certainly ought to be increased. They have a right to increase their revenue.

Q. 22. Have you any knowledge concerning the cost of railway transportation which would justify you in criticising the recent increase in the charge for carrying soap?

Mr. MATTHEWS: Well, I object on the ground of irrelevancy, and incompetency of the witness.

A. I have no knowledge of my own on the subject. It is hearsay simply. Perhaps I better hear that question again.

(Question read.)

2566 A. I will let my answer remain as it is.

Mr. MAXWELL:

Q. 23. You know the rate on soap between Chicago and New York, do you?

A. Yes. In carloads?

Q. 24. Yes.

A. Yes.

Q. 25. It is 30 cents.

A. Yes.

Q. 26. Have you any knowledge concerning the cost for transportation, to the railroad companies,——

A. No, sir.

Q. 27. —which would justify you in saying that that was an unreasonable rate?

A. No, sir.

Mr. MATTHEWS: I object, on the ground of irrelevancy.

A. (continued). That is a question which I believe no man, even no railroad man, could answer.

Mr. MAXWELL:

Q. 28. The rate between Cincinnati and Chicago, do you know?

A. In carloads, 15 cents.

Q. 29. Have you any knowledge or information which would justify you in saying that that was an unreasonable rate?

Mr. MATTHEWS: I object on the ground of irrelevancy.

A. I could not testify to that. I could not say that it was an unreasonable rate.

Mr. MAXWELL:

Q. 30. Is the soap business profitable?

A. I have no knowledge of the profits of soap manufacturers.

Q. 31. Have you any knowledge that would enable you to
2567 compare the margin of profit on soap to the manufacturer with that on starch or rice or cereals?

A. No, sir.

Q. 32. What is the average price of soap? You say you sell all kinds.

A. I am not a salesman and am not familiar with the prices of the various kinds of soap.

Q. 33. Well, I suppose neither are you familiar with the prices of the other articles that are in the 5th and 6th classes.

A. I could only answer in a very general way. While I have some knowledge, it is not an up-to-date knowledge. I do not keep posted on current prices in any way.

Q. 34. In your opinion, ought the comparative values of articles and the comparative margin of profits on articles figure in determining the comparative freight rates?

A. I believe they should be taken into consideration.

Q. 35. Taking everything into consideration, a comparison of values, margin of profits, bulk as compared with weight, and immunity from damage, do you know of any unjust discrimination

that is made in the rate on soap, bearing in mind that it is a rate applicable to all soap?

Mr. MATTHEWS: I object on the ground of irrelevancy.

A. The fact of there being but one class for all soaps is of small importance as the so-called high-class soaps or toilet soaps are not one per cent. of the soap shipped or manufactured. The
2568 only way that I know of determining the proper rates for classes of freight is by comparison, and, in my judgment, soap in carloads should take as low a class rate as is made on any article of merchandise.

Mr. MAXWELL:

Q. 36. Do you eliminate altogether, then, from your characterization the value of the article and the margin of profit?

A. No, sir, I take that into consideration, as soap is one of the articles that is cheapest in our line of goods, considering weight and quantity.

Q. 37. Have you taken into consideration at all the margin of profit?

A. As I have stated to you before, I am not aware, I do not know what is the margin of profit.

Q. 39. Then you have eliminated that entirely, have you not?

A. I have not eliminated it entirely, but while my *my* knowledge on that subject is not definite, as I stated before, while I have no definite information, I know from the competition in the business and also from the profits which we as jobbers get on these goods, that there is and can be very little, not a large percentage of profit in the manufacture of the goods.

Q. 39. Are you aware what dividends Procter & Gamble Company pays?

A. No, sir.

Q. 40. If I were to inform you that on their common stock
2569 they pay dividends of over sixteen per cent., would that affect your estimate of profits, and on their preferred stock a dividend of eight per cent., and that they earn a much larger per cent.?

A. While I would not doubt you if you told me so, I still believe that the percentage of profit is not large, is not great. The total profits do not depend entirely upon the percentage of profit on each box or each carload of soap. I might illustrate by our own business, but it would be irrelevant, and I will not do it.

Cross-examination.

By Mr. BAYLESS:

Q. 41. Mr. Dodge, you have spoken about the sharp competition in the soap business. Do you know of any failures among soap manufacturers within the last year or two?

A. I have not kept posted on that subject, sir. I do not know of any.

Q. 42. If it were a fact that Procter & Gamble Company's business pays sixteen per cent. on their common stock, and that the

Fairbanks pay a large per cent., say eight or nine, and that soap manufacturers generally pay from six per cent. up to sixteen, would that indicate that there was very sharp competition in that business, compared with the profits in other business?

A. As compared with the Carnegie Iron Works for instance, yes.

2570 Q. 43. I am not speaking of Carnegie; I am speaking of every business common to this section of the country; your own business, for instance, the wholesale business, or retail business on a large scale.

A. I am not prepared to answer the question.

Q. 44. Procter & Gamble sell their soap here in Chicago?

A. Yes.

Q. 45. Do you buy from Procter & Gamble?

A. We do sir.

Q. 46. They prepay the freight charges?

A. Their goods are, as we term it, sold to us delivered, which means that they pay the freight charges.

Q. —. Then you do not pay them.

A. No, sir.

Q. 48. And Procter & Gamble at Cincinnati are able to compete with the soap manufacturers of Chicago?

A. They do.

Q. 49. Otherwise you would not buy of them, would you?

A. No, sir.

Q. 50. Is it not a fact that the Fairbanks sell their soaps in Cincinnati?

A. I do not know.

Q. 51. And Kirks sell their soap in Cincinnati and Buffalo, don't they?

2571 A. I cannot say. I understand that they sell their soaps all over the United States.

Q. 52. All over the United States generally?

A. Yes.

Certificate.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

I, Wilson E. McDermut, a notary public in and for said County and State, duly commissioned and qualified, do hereby certify that the above named George W. Dexter, Charles A. Jennings and Walter W. Dodge were by me first severally sworn to testify the truth, the whole truth and nothing but the truth; that the foregoing depositions were reduced to writing by me, and were subscribed by the said witnesses respectively in my presence; that all of said depositions were taken on Friday, the 6th day of April, A. D. 1900, at the offices of John M. Harlan, Attorney at Law, Ashland Block, Chicago, in the County of Cook and State of Illinois, between the hours

2572 of 8 o'clock A. M. and 6 o'clock P. M. of said day, being the time and place specified in the notice hereto attached; that the

respective parties were represented by counsel at the taking of said depositions as noted in the caption thereto; that the stipulations were entered into by counsel as shown by the written stipulation hereto attached signed by Mr. Robert E. Hamill, attorney for the Baltimore and Ohio Southwestern Railroad Company, and as shown by the oral agreement of the other counsel present, noted in said caption; and that I am not counsel, attorney or relative of either party or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this ninth day of April, A. D. 1900.

____ ____,
Notary Public in and for the County of Cook and State of Illinois.

Fees.

Serving subpœna 1.00
Taking and certifying depositions.....

Total costs on depositions..... $

Received of Plaintiffs the sum of $— in full of all fees.

____ ____,
Notary Public.

2573 And afterwards, but on the same day to-wit: November 10th, 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, on their behalf in this cause, the Testimony of John Hoge and others, in the case of The Procter & Gamble Co. *vs.* The C. H. & D. Ry. Co. *et al.*, which Testimony is clothed in the words and figures following to-wit:

Depositions of witnesses taken before me, Matt. J. Day, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice and at the time and place specified therein, to be used as evidence on behalf of the plaintiff in an action pending before the Interstate Commerce Commission, in which The Procter & Gamble Company are plaintiffs and The Cincinnati, Hamilton & Dayton Railway Company *et als.* are defendants, Mortimer Matthews, Esq., being present on behalf of the plaintiff; S. O. Bayless, Esq., being present on behalf of the C., C., C. & St. L. Ry. Co., the L. S. & M. S. Ry. Co., the N. Y. C. & H. R. Ry. Co.; also for the C., H. & D. Ry. Co., the P. C. C. & St. L. Ry. Co., the Penna. Ry. Co.; also for the B. & O. S. W. R. R. Co.

2574 JOHN HOGE, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. State your name, residence and occupation?

A. John Hoge, Zanesville, Ohio; I am a member of the firm of Shultz & Co., of Zanesville, Soap Manufacturers.

Q. How long have you been a member of that firm?

A. Since 1865.

Q. Please state a little more in detail what the product of their manufacture is?

A. Mainly family or Laundry Soap.

Q. No Toilet Soaps?

A. No, sir.

Q. You are aware of the change in classification, in Official Classification territory in common or laundry soap, from Sixth Class to Fifth Class in car-load lots; and from Fourth Class to twenty per cent. less than Third Class in less than car-load lots, made on or about January 1st, 1900, are you?

A. Yes, sir.

Q. Are your firm and yourself satisfied with that change?

A. No, sir; we are not.

Q. What about other soap manufacturers throughout the United States, so far as you know upon that question?

A. Naturally, I think, they would be generally dissatisfied.

2575 Q. Do you know anything about a general meeting of Manufacturers of the central territory at Buffalo in February last?

A. I heard there was one, and was asked to be in attendance, but could not get away at the time?

Q. Were you notified as to the object of that meeting by those who called it?

A. My recollection is, that it was to express dissatisfaction about the change of rates and to try to have it remedied.

Q. What are the grounds of your dissatisfaction—the dissatisfaction of your firm is it?

A. Yes, sir.

Q. And yourself and your firm with this recent change in classification?

A. Well, it has been the custom for years back for Soap Manufacturers to deliver their goods free of freight. In other words, for the Manufacturer to pay freight to the purchaser; consequently the freight comes out of our own pockets. This advance means so much more out of our own pockets, and so much less profits. That is one good reason. Another is that the tendency is to curtail our sales, the higher freight the less margin we have or the less we seek to sell soaps at a long distance from home.

Q. How long had the classification which existed prior to January 1st, 1900 continued. How long had it been in force?

2576 A. I do not know as I can state exactly, but for years previous. For a number of years I should say. There was a temporary change I think in 1895, but I do not think it lasted long.

Q. I will ask you about that later. To what extent had the business conditions fixed those with reference to the former classification?

A. I do not know as I understand you exactly.

Q. Question read to the witness.

A. I *you* they had accepted it as permanent.

Q. Will you make a comparison between the prices of Common Soap, as they are now, with what they were in 1887?

A. My recollection is, that our Star Soap, which is a prominent brand we make, was about one dollar a box higher at that time.

Q. In 1887?

A. Yes, sir.

Q. How did that price come down, a dollar a box, gradually or all at once, or in various ways; describe if you can?

A. I think about twenty five cents a box at a time and at different times.

Q. Was the decrease steady or not?

A. No; I think probably a year or more, or two years making the change, or three years, I cannot be positive?

2577 Q. Were there any variations going down or up, or was the change all in one direction?

A. In a general way; a steady decline.

Q. When you say, the amount was a dollar per box can you state about what the price per box was in 1887, and the price per box now, say of your Star brand?

A. It was three fifty to three seventy five at that time, about 1887. It is now about two seventy five, it was two fifty several months ago.

Q. There has then, been a recent advance of twenty-five cents a a box in your Star brand?

A. Yes, sir; on the Star brand.

Q. When was this advance made, about?

A. I cannot state positively, but some months ago.

Q. Do you remember whether before or after January 1st, 1900?

A. Before, I think.

Q. Will you state why that advance was made?

A. Owing to a large advance in raw material.

Q. Was the advance in the price of soap commensurate with the price of raw material?

A. No, sir.

Q. When you say about, can you state about what the advance in raw material was, naming some of the raw materials, the principal ones?

A. Well, tallow advanced, I should say on an average of twenty to twenty five per cent.; resin from thirty to fifty per cent. or

2578 more; alkalis from twenty five to fifty per cent., and in fact almost everything that enters into the production of soap.

Q. Of boxes also?

A. Yes, sir.

Q. Did your firm advance the price of soap so as to absorb the advance in the price of raw material?

A. If we had our own way we would have done it, but the competition in soap was very lively, consequently we were governed a good deal by what our competitors did.

Q. What is the nature of competition in common soap and where are your competitors located in a general way?

A. They are located all over the country; nearly all the Middle States.

Q. And where do you ship your product or sell your product?

A. Largely through the Middle and Eastern States.

Q. That is territory covered by the Official Classification, generally speaking, is it not?

A. I am not positive as to that. I should say in a general way the bulk of our business is north of the Ohio River and east of the Mississippi River in a general way. We have trade other places of course.

Q. What if any effect does the local manufacturer have over your competition with him in the immediate and surrounding territory in which he is situated?

2579 A. Well he has the advantage of saving in freight certainly; also the advantage of being on the ground being close to his customers and watching them closer than we would.

Q. Do you mean that he does not have the same expenses you have, no travelling salesmen?

A. No; he is right on his own ground.

Q. How generally is this local competition in this territory in which you try to sell your product?

A. Quite common. Soap factories are scattered all over the country in a local way.

Q. This kind of competition exists in every place where there is such a local factory?

A. Generally speaking; yes, sir.

Q. While we are upon this subject of your competitors, I would like to ask you to state what you know about the Packers of provisions and their influence upon competition in soap, and how they work it &c.?

A. Well, they are cutting quite a figure in the soap business of late. A number of large Packers have went into the manufacturing of soap, and are trying to distribute it, to their local agencies in different parts of the country; for instance, Armour & Co.; Swift & Co.; Cudahy & Co., and others, and Kingan of Indianapolis are manufacturing soap, and we are informed at the same time that their agents are trying to sell meats, they are also trying to sell soaps.

Q. Do you know how they ship soap?

2580 A. Well, where their trade is large enough, I presume they ship in car-loads; where there is not such a large demand, they ship soap in with their meat and fill up a car-load.

Q. What, if any, advantage does this give them over you, for instance?

A. Well, I should say it would allow them to ship less than car amounts along with meat, and get the advantage of car rates, where we would have to pay less than car-loads for the same amount.

Q. You have to pay less than the car-load rate for the same amount?

A. Yes, sir; that is what I mean.

Q. You may state whether or not, that is giving them any advantage in introducing their product in places they have not sold before, and how?

A. It gives them that much advantage, in the south particularly,

to start with; they also have an advantage of having one salesman selling several different articles at one time.

Q. Do you know what their prices are as compared with prices of other soap makers, on equivalent brands of soap?

A. Generally some less.

Q. You may state whether or not most, if not all of the soap makers have equivalent brands; that is, brands which are equal, and brands which will readily take the place of each other

2581 at the same price?

A. Yes, sir; I think that is correct.

Q. What have you to say as to the possibility or impossibility of a widespread distribution of soap of one factory, except upon minimum freight rates?

A. I should say naturally the higher the rate of freight the more each factory would be curtailed to its immediate section.

Q. Have you felt or do you anticipate this effect from the advance in rates made on January 1st, 1900?

Mr. BAYLESS: I object to the question, as it asks the witness for a conclusion and not for any fact.

A. I know we are doing less business now than we did several months ago, whether that is the principal reason or not, I could not say.

Q. You have stated that your recent advance of twenty-five cents per box, in the price of soap, was insufficient to absorb the concurrent advance in the price of raw material. Was this addition sufficient to absorb the increase in the freight rate made on or about January 1st, 1900?

A. The addition of twenty-five cents a box?

Q. Yes, sir.

A. Yes, sir; that would take care of the freight rate advance.

Q. Would it to all points to which your Company ships?

A. No, sir; not to far distant ones, it would not. I am

2582 speaking of the average in the territory in which we do our business.

Q. Are these points beyond which you can not profitably sell your product?

A. Yes, sir.

Q. Will you state in a general way what those points are?

A. Extreme Western points and Southern points.

Q. What do you mean by extreme Western points?

A. Speaking in a general way, west of the Mississippi River.

Q. And southern points, or can you draw any line there?

A. Not so marked, as we have never had a very heavy trade in the extreme south.

Q. What, if anything, do you know about the practice of soap manufacturers shipping at net weights, and when that practice was in force and when it ceased?

A. It used to be a common practice; my recollection is that it stopped about 1888 or 1889.

Q. Do you know how long it had continued prior to that time?

A. As far as I know, all the time previous to that.

Q. Do you know whether other soap manufacturers were shipping in the same way at the same time?

A. Yes, sir; from conversation had with other manufacturers I know that to have been a common practice.

2583 Q. At what classification did you ship soap in car-loads from January 1st to January 15th, 1895?

A. What classification?

Q. Yes, sir. From January 1st to 15th, 1895?

A. The classification to that time was Sixth class for car-loads; Fourth class for less than carloads. I think there was a temporary change for a few weeks about that time. It was advanced one grade.

Q. From Sixth to Fifth, was it?

A. Yes, sir; that is my recollection, but that did not last long; I do not think over ten days or two weeks then the old classification was restored.

Q. Did you, during that two weeks pay at Sixth Class rates for your shipments?

A. My recollection is we paid the advance in classification, but it was refunded to us, given back to us later,—a drawback was given to us. This is only memory; now I would not be positive about it, one way or the other.

Q. Coming back to what you have stated about your dissatisfaction with the change in classification made on January 1st, 1900, I wish to recall something you said to me before you took the stand this morning, about the fact that the classification of other articles were not advanced with soap, as being one of the grounds of dissatisfaction. If you recall what I refer to, kindly testify as to what you have to say about that?

A. There are other articles in the same class with soap,

2584 which have not been raised, and we naturally think soap should not be selected out above other things.

Q. Will you give us what you know about Armour & Co.'s made of business in Zanesville, it is right at your residence?

A. They have a branch house there for the sale of their meats, and have their salesmen going about, dealing with the retail groceries, soliciting orders for meats, to which they add soaps, for the last two or three years. The same men that tries to sell meats also tries to make sales of soap.

Q. Does he succeed?

A. Yes, sir; they do some business. Our Truckman reports that he has seen soaps come in the same car with meats to Zanesville.

Q. Do you now refer to car-loads of meats or soap, or to mixed car-loads?

A. Mixed car-loads, containing both meat and soap.

Q. Was it a car consigned to one consignee, or were the consignments to various consignees?

A. No; all to Armour & Co.

Q. Do you know whether they have branch houses of this character in other places?

A. Yes, sir; you can see them scattered all over the country if you ride along the railroad.

Q. What do your salesmen report to you upon this subject, with regard to meeting with the competition of Armour & Co., at other places than Zanesville?

2585 A. About the same general report. Armour & Co.'s salesmen are selling both soaps and meat.

Q. Do they make any reports about Swift & Co., Cudahy & Co., and Kingan?

A. Yes, sir; the same report.

Cross examination.

By Mr. Bayless:

Q. Mr. Hoge, how long have you been connected with the soap business?

A. I think nearly forty years.

Q. How long have you been connected with the firm of Shultz & Co., at Zanesville.

A. Since 1865.

Q. What has been your position with reference to that Company or firm?

A. In the early years I did a little of everything; of late years I have attended more to the office duties of the firm.

Q. What branch of the office duties; have control of the salesmen?

A. I have been general manager of the office.

Q. In the matter of sales and reporting sales, did they come under your jurisdiction?

A. In a general way.

Q. How long has this firm, with which you are now connected, been in business?

2586 A. I think the elder Mr. Schultz commenced about 1853.

Q. Been in business continuous since then?

A. Yes, sir.

Q. When was the present firm organized?

A. In 1865.

Q. What amount of capital has the firm invested in the business?

A. Is that pertinent to this matter?

Q. Oh, it is one of the things that go with the business, and one of the most important.

A. A man about his business affairs is somewhat like he is about his love affairs. I do not like to be discourteous.

Q. Not at all, if you decline to answer.

A. Well, I would rather not be pushed as to the amount of our capital.

Q. The fact is, your firm has been making money right along?

A. We have made money the greater part of the time.

Q. Taking one year with another, you have been fairly successful?

A. Yes, sir; we have been successful.

Q. I do not want to go into the details of your business, but I want to show that it is not a losing one?

A. Our success has been not altogether in the soap business; we are engaged in many outside enterprises.

Q. You state that your firm is not satisfied with the new
2587 classification?

A. No.

Q. In what classification is common laundry soap such as you manufacture?

A. In car-load lots now, the Fifth classification; it used to be the Sixth.

Q. The Sixth Class, is the lowest classification of freights, is it not?

A. I am not an expert railroad man enough to say whether there is anything less than that.

Q. Well, the lowest class?

A. There are special rates below that, I think.

Q. Is not the Sixth class the lowest classification of rates?

A. That may be so or not.

Q. And the Fifth class is next to that?

A. Yes, one higher.

Q. The classification effective January 1st, on common laundry soap was Fifth class by car-load lots?

A. Yes, sir; it was Sixth, now Fifth class by car-load lots.

Q. Now, freights on soap, as a rule are paid by the manufacturers, you say?

A. Yes, sir; I think that is uniform.

Q. In the event of an increase in freight rate who pays that increase; the manufacturer, consumer or dealer?

2588 A. Certainly on a send-off the manufacturer pays it.

Q. But, is it not the fact that a manufacturer always endeavors to charge for his product a price that will reimburse him for the increased freight?

A. He would like too.

Q. Well, is it not a common practice?

A. No, sir.

Q. Then the manufacturer must lose the increase if he does not charge it?

A. I should say so to a large extent.

Q. And the consumer gets the benefit of the corresponding increase?

A. Yes; certainly.

Q. Then the increase in rates does not affect the consumer?

A. Well, there are two ways of looking at that.

Q. Put it both ways in your deposition?

A. Of course, an increase in freights comes to the manufacturer in the first place, and he should try to get that from the consumers; but owing to the excessive competition in the soap business, which is something terrific to people that do not understand, this is not possible, or it is not possible to do that under the present circumstances.

Q. Then, if a manufacturer, because of that excessive competition is unable to sell his soap so as to reimburse himself for the
2589 increase in freight, then the consumer gets the benefit of the competition as well as the rates?

A. In some cases he would; that would be owing to the competition among the retailers to a great extent again.

Q. I understood you to say in your direct examination, that the increase in rates would have a tendency to curtail your sales?

A. Yes, sir.

Q. Now, does the increase in rates have any tendency to curtail the use of the product; or is, your sales curtailed by reason of the fact that you are unable to compete with local factories?

A. Largely to that effect.

Q. A slight increase in the rates made recently effective, January 1st, would have very little effect on the amount of soaps used by the public, would it not?

A. It would not have a very marked effect; but I think this principle applies to all articles, the higher they are the less consumption; the cheaper they are the more consumption.

Q. Laundry soaps have become an article of necessity in the ordinary household, in this territory?

A. Yes, sir.

Q. And the fact that there has been a slight increase in freights, would hardly have a perceptible influence, would it, upon the amount of soap used?

A. Except as I have stated before, an advance in any article
2590 has a tendency to decrease consumption.

Q. Would it not be very slight indeed, in the amount of soap consumed, from the fact that the classification is changed from the Sixth to the Fifth Class?

A. To what extent would be somewhat problematical.

Q. Is it not your opinion it would be almost insignificant?

A. I would not say insignificant.

Q. It would be very slight, would it not?

A. It would not be much.

Q. Then the fact that an increase in rates would curtail the territory within which one factory might dispose of its product, would give a local factory an advantage over factories situated remotely, would it not?

A. Yes, sir; I should say.

Q. Located at Zanesville, as you are, it would give you an advantage over The Procter & Gamble Company located at Cincinnati?

A. For our home trade?

Q. For your home trade?

A. Yes, sir.

Q. And of course, it would give The Procter & Gamble Company an advantage over you at Cincinnati?

A. Yes, sir.

Q. The same at Jackson, Michigan, with reference to the factory located there?

A. Yes, sir.

2591 Q. Will you explain why that would not equalize up among the manufacturers, and why not be fair?

A. It would tend to localize the trade of a firm consequently you would not have large factories.

Q. It would encourage local industries over the country?

A. Yes, sir; and decrease traffic of the railroads just that much.

Q. Decrease traffic of the railroads; that would be for their own management.

A. Yes, sir.

Q. Now, you say that in 1887, you sold your soaps at one dollar per box higher than you do at the present time?

A. Yes, sir.

Q. There were not nearly so many local manufacturers of soap?

A. Well, I am not prepared to answer upon that; I think there were a great many local factories at that time.

Q. Has there not, within the last thirteen years, since 1887, sprung up a large number of small soap factories?

A. Yes, sir; and some have went out of business; whether the number has changed much or not I could not say.

Q. Now, you spoke of having increased the price of your soap within the last few months?

A. Yes, sir.

2592 Q. You say you did not increase it as much as if you had had your own way. Explain what you mean by having your own way?

A. I mean we did not increase the price of soap in proportion to the price of raw material, and the only reason why we did not, was owing to the excessive competition.

Q. Then the matter of your increasing was controlled solely by reason of soap competition?

A. Yes, sir.

Q. Still your competitors are getting the same freight rates you are, are they not?

A. I presume they are.

Q. And they are all situated alike in that respect, as to having to pay the increased rate or cost by the change of the classification, are they not?

A. They should be treated the same as we are.

Q. Do you know anybody that is not treated alike?

A. No, sir.

Q. Do you know anybody that has got a rebate or refunder?

A. I have taken no pains to learn.

Q. You are not getting any, within the last eighteen months?

A. Well, that is a leading question.

Q. What do you sell your Star soap at now?

A. Two dollars and seventy-five cents a box.

2593 Q. How long since you changed that price from two dollars and fifty cents?

A. Several months ago; I do not remember the exact date.

Q. Was it about the 1st of January?

A. I think it was before then.

Q. It was after you knew that the classification on soap would be changed, was it not?

A. No; it was before we knew that. I think, I would not be positive upon that point.

Q. You did not know then that you would have made any advance on the price of your soaps, because of the change of classification of common laundry soap by the Classification Committee?

A. No, sir.

Q. And made no advance of that kind?

A. No, sir.

Q. The change you made was solely on account of the cost of raw material and things that go into the manufacture of common laundry soap?

A. Yes, sir; that is a fact; but the advance was not enough.

Q. Do you know what the advance in freight rates has been, what amount is put upon a box of soap by the change of classification from the Sixth to the Fifth?

A. About twenty per cent. over the rate in the other classification.

Q. I asked you about how much it would amount to in cents on a box, say between Zanesville and Chicago?

2594 A. Well, I don't know whether I can tell that off-hand; I can't carry the rates in my head.

Q. I will ask you if it is not about two and one-fourth cents on a box additional, from Zanesville to Chicago, by the change in the classification from the Sixth to the Fifth Class?

A. No; I should say it was near four cents a box.

Q. What was the rate per box, when it was Sixth class from Zanesville to Chicago; freight per hundred?

A. I could not tell you, I have not those amounts in my head; I do not attend to the shipping business myself, I have clerks.

Q. How did you arrive at four cents per box?

A. Approximating it.

Q. How much does a box weigh?

A. Eighty five pounds.

Q. Eighty or eighty-five pounds?

A. Ours weigh eighty five. The naked box is a little heavier than Procter & Gamble's.

Q. Is not Procter & Gamble's assumed at eighty or shipped at eighty?

A. I do not know; I could not tell you.

Q. Now, assuming, that the shipment of the Procter & Gamble Company soap, from Cincinnati to Chicago, at Sixth class was twelve cents. Now, under the changed conditions is fifteen cents a hundred to Chicago. Do you think that would be an undue advance for the handling of freight, in view of the change of con-

2595 ditions and the advance of the price of labor and material and supplies, that have been brought about in the past year?

A. From a soap manufacturer's point of view, I would say, yes, sir.

Q. Now, from the other side of the matter; to be fair and put

yourself in the position of a disinterested party, and realizing the fact, assuming the fact, that there has been an increase in the price of labor, a very large increase in all the materials and supplies that enter into the maintainance and operation of a railroad, would you say that slight increase was not a reasonable one?

A. That is, the twenty five per cent. advance?

Mr. MATTHEWS: Do you refer to the advance since 1887 or the past year?

Mr. BAYLESS: No, sir; I speak of the past year.

Mr. MATTHEW: I object to the question as immaterial; it should be directed as to 1887.

A. As I said before, from a soap manufacturer's standpoint, I think it is unfair. And putting it in a direct sense as you have stated, I should still think it unfair, unless on other articles.

Q. What other articles are not advanced?

A. Well, off-hand I could not tell you, but a number of articles in the same class as soap.

Q. Don't you know that all the manufactured products have been advanced, except the one article starch?

2596 A. No, I don't know it. I think if you will take your classification and look it over, I think you will find a great number of them.

Q. I mean all articles analagous to soap and starch, which is a cereal product?

A. Well, take bi-carbonate of soda or tale saleratus, which is put up in boxes.

Q. They are not advanced?

A. No, sir. Why should soap be selected particularly.

Q. Has not coffee and sugar and such articles been advanced in the classification?

A. I do not know of my own knowledge. I presume they have, for all I know.

Q. You stated, I believe, that there are soap manufacturers located all over the country?

A. Yes, sir.

Q. And the difference from the classification of the Sixth to the Fifth, would affect all those factories alike in their shipments?

A. I presume it would.

Q. You say that Armour & Co., Swift & Co., Cudahy & Co., and Kingan & Co., of Indianapolis, shipped soap out to distributing depots or stations?

A. Yes, sir.

Q. Shipped along with their other products?

A. Yes, sir.

2597 Q. Do you know what is the effect of The Procter & Gamble Company shipping out soap with glycerine, candles and other products of their factory?

A. I do not know anything about the practice of the Procter & Gamble Company in that respect.

Q. Well, you stated that there was a class of laundry soaps that

belonged to the same class, or was considered in the market the same character of soaps? Is it not the fact, that Ivory soap is recognized as the highest grade of laundry soap and in the market brings a better price than the common laundry soaps?

A. Ivory soap as I understand, is used for various purposes; laundry use, bathing purposes, general household and toilet purposes.

Q. For that reason, is not Ivory a competitor then of Star soap?

A. Yes, sir.

Q. Does not Ivory soap bring a better price in the market?

A. Yes, sir.

Q. How does the price of The Procter & Gamble soap compare with your Star soap?

A. It is higher.

Q. Then do you think it should be shipped at the same rate as a lower grade soap?

A. Well, it is soap used for household purposes.

Q. It is used for other purposes, you state, and therefore more acceptable.

A. Worth more on the market.

2598 Q. The more acceptable the article the higher the rate should be?

A. I am not posted upon the question of rates, not being a railroad man. For instance, some wheat is of a higher grade than others, but I do not expect it would make any difference in the freight rate.

Q. Well, do you know as a matter of fact, whether Ivory soap is used as a laundry soap?

A. Yes, sir.

Q. Generally or only to a limited extent.

A. Well, it is advertized quite freely for high grade laundry purposes, I think used for that.

Q. Do you think used to any considerable extent as a laundry soap?

A. I do.

Q. You have said that you are unable to compete with local factories at a distance beyond the immediate territory, or the territory south of the Ohio and west of the Mississippi. You would not expect to obtain such rates from railroads as enabled you to compete locally with factories at St. Louis, Omaha and Denver?

A. Well, we could not do it now, with the present margin of profit.

Q. Have you ever been able to do it?

A. Yes, sir.

Q. At the rate given you then?

A. The old margin of profit to soap manufacturers used

2599 to have was more liberal; it was larger than now, and you could ship much further and as the margin gets less the territory must be curtailed.

Redirect examination:

Q. Could you give the profit you now make on one box of your soap, of the star brand?

A. The profit we make?

Q. Yes, sir; on one box?

A. I am almost ashamed to tell you. It is like a question asked me a little while ago. Well, our present margins are quite small, practically nothing.

Q. Did other manufacturers of soap make an increase in the price of soap about the same time you did?

A. Some did, some did not, the most of them did, I think.

Q. Some did not increase quite as much per box?

A. Some not as much as we did.

Q. What brand of The Procter & Gamble soap is your Star brand equivalent of?

A. The Lenox brand.

Q. You were asked some questions with reference to the rate of freight from Cincinnati to Chicago being raised from twelve to fifteen cents per hundred pounds. Now, if it be the fact that the rate was twelve cents per hundred pounds from Cincinnati to Chicago in 1887, and has been ever since but that the aver-

2600 age per ton per mile of all articles has been reduced from twenty five to fifty per cent. since 1887; do you think the freight rate on soap should be advanced from twelve to fifteen cents or twenty-five per cent. as it is now?

A. Certainly not, if those are the facts it places soap men at a great disadvantage.

Q. Our railroad friends seem to think that because, as they say, the cost of the operation railroads has increased within the past year considerably over what it was a year ago, that they are justified in making this addition in classifications of freight on soap, and have asked you some questions based on the truth of that supposition. Suppose however that the present cost of the operation of railroads has not advanced over what it was in the year 1887, would you consider it fair that the rate of freight on soap should now be advanced over what it was in the year 1887?

A. I would not under those conditions.

Q. You were asked whether or not starch was not the only article advanced from Sixth to Fifth class; have you any recollection as to rice?

A. Rice was one of the articles, matches, salaratus, bi-carbonate of soda, and a number of other articles I can't remember.

2601 ROBERT CARLISLE, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. State your name, residence and occupation?

A. Robert Carlisle; Plumber, residence Cincinnati, Ohio.

Q. With what plumbing Company are you connected in the City?

A. With The Thomas Gibson Company.
Q. How long have you been connected with them?
A. Thirty years.
A. How long have you been a plumber?
A. Forty years.
Q. Does that company deal in sheet lead, lead pipe and solder?
A. Yes, sir; general plumbing supplies.
Q. Do you know the jobbers' prices of those articles?
A. Yes, sir; at the present time.
Q. Please state what they are?
A. Sheet lead is 5,85/100 cents per pound in bulk; lead pipe at present time is 5,35/100 per pound; solder is 16 cents a pound.
Q. Those prices are Cincinnati prices?
A. Yes, sir; Cincinnati prices.
2602 Q. Will they vary much, if any, over the United States?
A. No, sir; I do not think they would.

Cross examination.

By Mr. BAYLESS:

Q. Are those prices to Jobbers?
Q. The prices paid by Jobbers when purchasing from the manufacturer.
Q. How does the present price of sheet lead, lead pipe and solder compare with a year ago?
A. I think very little difference, about the same prices in lead for over a year; solder has varied, three weeks ago it was quoted at nineteen cents; it has been up and down.
Q. Solder has taken a range of three cents in the last three weeks?
A. Yes, sir.
Q. What was solder worth a year ago?
A. At one time in the early part of the season it was fourteen cents about a year ago.
Q. How do the prices on sheet lead, lead pipe and solder compare with what they were twelve years ago?
A. Well, I could not say exactly as to that; I think they were lower twelve years ago.
Q. You could not tell how much?
A. No, sir.

2603 Re-direct examination:

Q. What is the limit of variation in the price of solder?
A. Well, the change in the last six months has not been very much; from a half cent to a cent and a half.
Q. What is about the highest price?
A. Twenty one cents a pound.
Q. The lowest:
A. I have seen it as low as twelve cents.
Q. What is the limit of variation of lead pipe in price?
A. Well, that has been about the same for over a year, not very

much variation, it has been close up to six cents. Sheet lead about the same.

Q. How long has sheet lead continued approximately at the price now?

A. Well, for nine months.

Q. How was it five or six years ago?

A. I do not think there was much difference in it.

Q. How in 1888?

A. I could not say exactly what it was then.

Thereupon the further taking of depositions was adjourned until to-morrow, at 12 o'clock M. at this place.

2604 OFFICE OF MORTIMER MATTHEWS, ESQ., BLYMYER BUILDING, NO. 514 MAIN STREET, CINCINNATI, OHIO.
SATURDAY, *April 28th*, 1900, at 12 o'clock m.

Present, Mortimer Matthews, Esq., on behalf of the plaintiff, and Edward Colston, Esq., on behalf of the B. & O. S. W. R. R. Co., and at the request of Mr. Bayless. The taking of depositions were resumed.

FENTON LAWSON, of lawful age being by me first duly cautioned and sworn, deposes and says as follows:

Examined by Mr. MATTHEWS:

Q. State your name, residence and occupation?

A. Fenton Lawson, merchant and manufacturer; I live in Cincinnati.

Q. Of what company are you a member?

A. Of the F. H. Lawson Company; I am its Vice-president.

Q. What is the business of your company?

A. They deal in metals, house furnishing goods; manufacture house furnishing goods; tin specialties and iron specialties.

Q. Do you purchase block tin?

A. Yes, sir.

Q. Do you know the market price of it?

A. I knew the price two or three years ago; it was $30.25
2605 per one hundred pounds f. o. b. New York City.

Q. That means 30¼ cents a pound?

A. Yes, sir. I have here a list of April 24th, which gives the quotations of that day.

Q. Is that the price to the Jobber?

A. That is the price for a certain quantity, so many tons; it does not make any difference whether to the Jobber or the Manufacturer.

Q. You used it in manufacturing?

A. Yes, we use more for manufacturing that jobbing.

Q. Do you buy and sell copper?

A. No, sir; not ingot copper.

Q. Do you buy and sell antimony?

A. Some, not much.

Q. Do you know the price per pound of antimony?
A. The last time I heard it was somewhere around ten or eleven cents a pound; I do not know exactly.
Q. Is that a recent price?
A. Yes, sir. I would not want to quote the price of antimony as we buy so little I do not feel competent.

Cross-examination.

By Mr. COLSTON:

Q. Is it your opinion that the McKinley Tariff on Tin Plate is a good thing?
A. I would not want to express myself, I might get myself in trouble. Is a good thing for what?
Q. For this country.
2606 Mr. MATTHEWS: I object to it as irrelevant?
A. It was.
Q. Those prices you gave are in quantities; what quantities?
A. In the wholesale quantities; twenty-five pigs would weigh about a ton.
Q. This article you speak of, and on which you put this price is an article out of which domestic tin is made, such as tin pans and cups?
A. They are made of sheet steel and coated with tin.
Q. What is the article you speak of?
A. It is pure tin, the same as any other metal, like pure silver or pure gold. It is block tin, a metal.
Q. It is a metal used for coating steel plates?
A. Yes, sir.
Q. In what shape does it come?
A. In Ingots weighing about one hundred and twenty five pounds.
Q. Something like lead ingots?
A. Yes, sir; a little different in shape.
Q. What is the length of them?
A. They are about eighteen inches long and about six inches wide and weighs about one hundred and twenty-five pounds.
Q. They are packed for shipment?
A. No, sir; it is like pig iron.
2607 Q. Then when you speak of buying block tin, you mean tin in the shape of those pigs or ingots?
A. Yes, sir.
Q. How does the antimony differ from these pigs or block tin, in shape?
A. It comes in a flat square cake.
Q. About what size?
A. I should think a foot square and a couple of inches thick.
Q. How much does each block weigh?
A. It is just a guess; I should say about thirty pounds.
Q. Do you use that in manufacturing?
A. We do not use it in manufacturing.
Q. You handle very little of it?

A. It is used in hardening metal and we handle very little.
Q. Do you know in what shape it is shipped?
A. It is generally in casks, the corners are round.

2608 STATE OF OHIO, *County of Hamilton, ss:*

I, Matt J. Day, a Notary Public in and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the above named John Hoge, Robert Carlisle and Fenton Lawson, were by me first severally sworn, to testify the truth, the whole truth and nothing but the truth; that the foregoing depositions were reduced to writing by me in Shorthand, in the presence of the witness, and the signature of the witnesses thereto subscribed, were waived by the respective parties present. That the said depositions were taken at the time and place specified in the notice hereto attached; that the respective parties appeared by counsel as above noted and were continued from day to day as heretofore noted; and that I am not counsel, attorney or relative of either part-, or otherwise interested in the event of this suit.

In testimony, whereof, I have hereunto subscribed my name and affixed my Notarial Seal, on this the 28th day of April, A. D., 1900.

——— ———.

2609 And afterwards, but on the same day to-wit: November 10th 1905, came the Defendants by the Solicitors, and filed in the Clerk's Office of the Court aforesaid, on their behalf in said cause, the Testimony of Jospeh S. Leeds and others, in the case of The Procter & Gamble Co. *vs.* The C. H. & D. Ry. Co. *et al.*, which Testimony is clothed in the words and figures following, to-wit:

Before the Interstate Commerce Commission.

THE PROCTER & GAMBLE COMPANY
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

Rebuttal Testimony Taken on Behalf of Complainants at Cincinnati, Ohio, September 27 *and* 28, 1900, *Before Hon. J. W. Fifer, Commissioner.*

Appearances.

Mr. John W. Warrington and Mr. Mortimer Matthews, for Complainant.
Mr. Lawrence Maxwell, Jr., for C. H. & D. Ry. Co., Pennsylvania Railroad Co., and P., C., C. & St. L. Ry. Co.
Mr. Edw. Colston, for Baltimore & Ohio Southwestern Ry. Co.
J. H. Fishback, Stenographer.

2610 CINCINNATI, OHIO, *September* 27, 1900—11 o'clock a. m.

Commissioner FIFER: Gentlemen, if you are ready, we will proceed. It would be well to have the appearances of counsel noted.

(Appearances of counsel will be found on preceding page.)

Commissioner FIFER: I understand this is rebuttal testimony to e taken on the part of complainant under the order of the Commission.

Mr. WARRINGTON: Yes, sir.

Commissioner FIFER: You may call your witness, Mr. Warrington.

Mr. WARRINGTON: I will ask that Mr. Leeds be sworn.

JOSEPH S. LEEDS, a witness called on behalf of complainant, being duly sworn, testified as follows:

Mr. WARRINGTON: Where do you reside, Mr. Leeds?

Mr. LEEDS: Near Batavia, Ohio.

Mr. COLSTON: Near Batavia, Ohio?

Mr. LEEDS: Yes, sir.

2611 Mr. WARRINGTON: What, if any, connection have you had with railroads?

Mr. LEEDS: I railroaded most of the time from 1865 up to three years ago. I was first telegraph operator on the old Marietta & Cincinnati Railroad here in this city. Subsequently I was with the Chicago, Burlington & Quincy Railroad for a period of eleven years. Afterwards I was with the Atchison, Topeka & Santa Fe for a period of nine years, two and a half years of which time I was Assistant General Freight Agent and four years General Freight Agent of the road. I was, then, Chairman of the Transcontinental Association, and then with the Missouri Pacific and Iron Mountain roads as Freight Traffic Manager; then as Traffic Manager of a commercial association in California, known as the Traffic Association of California, and I was also Traffic Manager of the Business Men's League of St. Louis for a period of two years.

Mr. WARRINGTON: What of these companies and associations or positions furnished you occasion for fixing freight rates?

Mr. LEEDS: Well, with the Atchison, Topeka & Santa Fe as Assistant General Freight Agent and as General Freight Agent and with the Transcontinental Association as Chairman.

2612 Mr. WARRINGTON: What was that association—the Transcontinental?

Mr. LEEDS: It was an association for the regulation and promulgation of rates and tariffs on business to and from the Pacific Coast in the United States and Canada, by the all rail lines.

Mr. WARRINGTON: What, if any, connection had you with a committee which I believe was known as the Uniform Classification Committee?

Mr. LEEDS: I was a member of that Committee for sometime and participated in the deliberations of that body at several meetings.

Mr. WARRINGTON: What territory was embraced in the deliberations of that Committee?

Mr. LEEDS: It was an effort made to unify the classification throughout the United States, and Canada, I believe was also embraced.

Mr. WARRINGTON: You spoke of the Business Men's League of

St. Louis. What was that so far as freight rates were concerned?

2613 Mr. LEEDS: It had to do with the relations between the business men or merchants of that city, the shippers, and the railroads with respect to the movement of their traffic as well as passenger rates, and otherwise.

Mr. WARRINGTON: What opportunities for considering freight rates and classifications did your relations with the Missouri Pacific give you?

Mr. LEEDS: I had absolute control so far as that road was concerned of their relation to the classification as member of the Western Classification Committee.

Mr. WARRINGTON: Tell us something about that system of roads; what territory did it cover?

Mr. LEEDS: It extends, beginning on the north, from Omaha through Eastern Nebraska; there is a large system of road in the State of Kansas, in Missouri, Indian Territory, and Arkansas. I believe that is about the extent of their system—and Louisiana also.

Mr. WARRINGTON: What, if any, examination have you made of schedule 20; that is, Official Classification 20?

Mr. LEEDS: I have made a tolerably thorough and careful analysis or examination of that classification.

2614 Mr. WARRINGTON: What, if any, comparison have you made between it and schedule 19, say?

Mr. LEEDS: I have examined the advances which were made, particularly from the sixth to the fifth class between the two classifications, and have paid some attention as I went through it to other changes in the classification that are indicated in the schedule by a "dagger" I believe.

Mr. WARRINGTON: Have you made a comparison of soap as an article of freight with articles which are nominally in the sixth class of schedule 20?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Are you able to tell us what articles of the sixth class you have examined and regard as fairly comparable with soap as a freight subject?

Mr. LEEDS: Yes; I prepared a list of them.

Mr. WARRINGTON: Have you got that list?

Mr. LEEDS: I think I have. Yes, sir; I have (producing paper).

Mr. WARRINGTON: Will you read it.

Mr. LEEDS: Yes, sir. Beginning with the classification alphabetically there is Alum, alumina, sulphate of ammonia, barrels

2615 and cooperage—empty——

Mr. COLSTON: I understand that these are articles that you say in your judgment are, according to physical characteristics, properly classified with soap.

Mr. LEEDS: I did not say that.

Mr. COLSTON: What is it you are reading, then?

Mr. WARRINGTON: A comparison as articles of freight.

Mr. COLSTON: I don't know what you mean by that. You asked as to articles fairly comparable with soap.

Mr. WARRINGTON: As articles of freight. Proceed, Mr. Leeds.

Mr. LEEDS (continuing): Bleach or bleaching powder; bone black; brimstone; caustic soda; cereal products, which embraces outside of the grains themselves something like 55 articles, I believe; chemical wood fibre; coke petroleum; core compound liquid, used in brass foundries; copper ore; copper matte, cakes, ingots, bars, pigs, residue or slabs, value not to exceed $100 per net ton; furniture and furniture stock in the rough; grindstones; pig lead; phosphate sodium; potash; rice; rosin, in barrels; salsoda; salt; soda ash; soda silicate; soda sulphate; spelter; sulphate of ammonia, sulphur; tripoli; white lead, and sheet zinc.

2616 Mr. WARRINGTON: You may state to us, if you will, what are the characteristics of these articles which afford comparison or justify comparison with soap as a freight article.

Mr. LEEDS: Do you want that in detail?

Mr. WARRINGTON: No, I do not care to take up each item; that would take more time than I care to give to it, but state in a general way, so that we will understand, what reasons you have for saying that these articles are fairly comparable with soap for freight purposes.

Mr. LEEDS: The general characteristics of these articles as articles of freight to my mind are no better, and some of them probably not so good as soap as an article of freight; the manner of packing for one thing, in some of them; in other the value; in others the liability to damage to other freight in the same car, and in others the difficulty, perhaps, in handling; that is, they are not as easily handled as soap would be in the usual manner packed. Some of them are liquids. Some of them are more liable to damage in handling; they are not usually as securely packed.

Mr. WARRINGTON: What, if anything, has the tonnage carried to do in this regard?

2617 Mr. LEEDS: Well, there is scarcely an item mentioned here that would yield as much in tonnage as soap, I should think. Cereal products would be an exception to that.

Mr. WARRINGTON: That is, if considered as a whole?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: How is that as to any one of them?

Mr. LEEDS: There is probably not as much outside of the grains themselves of any one of the commodities as soap. I should not think so.

Mr. WARRINGTON: Would that be so as to flour?

Mr. LEEDS: I think, yes, it would.

Mr. WARRINGTON: What, if any, investigation have you made into the articles of the sixth class nominally which are given commodity rates?

Mr. LEEDS: I have examined the commodity rates so far as obtainable, and have made a list of the articles from those commodity rates, or had it made, of the exceptions to the sixth class rate taking a lower rate than the sixth class rate.

Mr. WARRINGTON: What is that paper (handing to witness)?

Mr. LEEDS: That is the list prepared of the articles in the
2618 sixth class nominally which by commodity or special rates carry a lower rate than the sixth class.

Mr. WARRINGTON: This we wish to offer as Exhibit A.

Commissioner FIFER: If there are no objections it may be marked as an exhibit.

(The same is hereto attached and marked Exhibit A.)

Mr. WARRINGTON: Now, of the articles which you have mentioned as being allied with soap as subjects of freight, what of them are being carried at commodity or special rates, and have been?

Mr. LEEDS: I find bleach or bleaching powder; brimstones; caustic soda——

Mr. MAXWELL: Have you a list of them there?

Mr. LEEDS: I have a memorandum to refresh my memory. It won't take long to read it.

Mr. WARRINGTON: Go ahead, Mr. Leeds.

Mr. LEEDS: Bleach or bleaching powder; brimstone; caustic soda; cereal products; copper ore; copper matte, cakes, ingots, bars, pigs, residue or slabs of a value not to exceed $100.00 per net ton; lead, pig; rosin, in barrels; salsoda; salt; soda ash; soda silicate; soda
sulphate; spelter; sulphate of ammonia; sulphur, and zinc,
2619 sheet.

Mr. WARRINGTON: Are you able to state how many articles are really left in the sixth class after excluding those nominally there, but actually carried at commodity rates, or special rates lower than the sixth class?

Mr. LEEDS: Sixty-seven, I believe, is the number; between sixty and seventy.

Mr. WARRINGTON: What is the total number of the articles nominally in that class?

Mr. LEEDS: There are about three hundred entries in sixth class in the classification. Some of them are repetitions. I should think 250 articles would cover the list.

Mr. WARRINGTON: State whether or not paving stones, brick, lime and sand are in this list of commodity rates?

Mr. LEEDS: They are.

Mr. WARRINGTON: Are they carried at rates less than the sixth class?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: I want to put in this list of articles which are
called cereal products in the testimony of Mr. Leeds thus far
2620 which he said were about 55 or thereabouts in number. What is the paper I now hand you?

Mr. LEEDS: This is a list of them, excluding the grains themselves, the raw grains.

Mr. COLSTON: Of what?

Mr. LEEDS: Of cereal products.

Mr. WARRINGTON: We will offer this as Exhibit B.

Commissioner FIFER: Let the gentlemen on the other side see it. If there is no objection it may go in.

(The same is hereto attached and marked Exhibit B.)

Mr. WARRINGTON: The raw grains are shown on this paper which are know and denominated in the sixth class as cereal products, the raw grains (handing paper to witness)?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: We desire to offer this as Exhibit C.

(The same is hereto attached and marked Exhibit C.)

Mr. WARRINGTON: I wish you would tell us what these papers are?

Mr. LEEDS: It is a list of articles taking the lumber rates.

2621 Mr. WARRINGTON: Do you mean a list of articles of the sixth class?

Mr. LEEDS: Not necessarily; no sir.

Mr. WARRINGTON: I mean the sixth class nominally.

Mr. LEEDS: Wherever these articles are found in the classification; they may be fifth or sixth class; so far as the lumber rate is concerned, yes.

Mr. WARRINGTON: I wish you would identify each paper and tell what class the list is taken from, whether the fifth or sixth, no matter whether carried at commodity rates or not.

Mr. LEEDS: I would like to consult the classification on one item here.

Mr. WARRINGTON: If your honor please, I will withdraw these papers referred to now for the present. I misunderstood them.

Commissioner FIFER: Very well. It would be well for you to designate what papers are withdrawn.

Mr. MATTHEWS: The papers that have not been identified.

Mr. MAXWELL: The lumber rates?

Mr. MATTHEWS: Yes, sir; the lumber rates. They were not offered or identified. All after Exhibit C is withdrawn. That will cover the matter of what is withdrawn.

2622 Mr. WARRINGTON: I should like to know whether in the list of commodity rates, Exhibit A, there is included what has been called in testimony by Mr. McCabe "crude articles," in the rough, unfinished state, and, if so, what those articles are and whether this paper describes them. (Handing paper to witness.)

Mr. LEEDS: Yes, sir; it does.

Mr. MAXWELL: Has this witness read Mr. McCabe's testimony?

Mr. LEEDS: Yes, sir; I have.

Commissioner FIFER: Show it to counsel on the other side. If there is no objection, it may go in.

Mr. WARRINGTON (after examination by counsel for defendants): We offer this as Exhibit D.

(The same is hereto attached and marked Exhibit D.)

Mr. WARRINGTON: I wish to ask the same question respecting this paper, "Manufactured or partly manufactured articles." Are they included in this list, Exhibit A, of commodity rates?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Is this the list (handing to witness)?

Mr. LEEDS: Yes, sir; this is the list. The heading reads "Manufactured or partly manufactured articles.

2623 Mr. WARRINGTON: We offer that paper as an exhibit.

(The same is hereto attached and marked Exhibit E.)

Mr. WARRINGTON: Of the 67 articles remaining in the sixth class after deducting or excluding those which take commodity rates, what are related to soap, if any, in a freight sense?

Mr. LEEDS: I made a memorandum of that, which I have mislaid, and I do not recall them.

Mr. WARRINGTON: Before doing that I will ask if you have a list of the 67 articles so remaining.

Mr. LEEDS: Yes, sir.

Mr. COLSTON: He has already put that in, I think.

Mr. WARRINGTON: No; it has not been put in. State whether this list represent the 67 articles so remaining.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: We offer this as Exhibit F.

(Hereto attached and marked Exhibit F.)

Mr. WARRINGTON: Now, I will recur to the question of these 67 articles, Exhibit F. What are related to soap in your judgment in the sense in which you have been making comparisons?

Mr. LEEDS: Alum, rice, bone black, chemical wood fibre, coke petroleum—petroleum coke is what it is—core compound

2624 liquid in barrels, phosphate sodium.

Mr. WARRINGTON: Take rice; what characteristics has it in a freight rate sense that are in common with those of soap, in the same sense, in your judgment?

Mr. LEEDS: It is handled ordinarily by the same trade and would move along with it in lots to the same consumers. It has some characteristics that are perhaps not so good as soap.

Mr. WARRINGTON: What are they?

Mr. LEEDS: I do not believe the manner in which it is packed is as desirable as that of soap, although its density is sufficient to load a car to its capacity. It originates, however, at the seaboard, I believe almost wholly, and it moves in one general direction to the consumer, and naturally would not be as competitive an article as one which had a wider origin.

Mr. WARRINGTON: What have you to say in the same respect of any of the other articles so remaining in the sixth class?

Mr. LEEDS: There is no other article that I have mentioned there that would have as large a tonnage as soap would have, and I believe there are none of them with the exception of phosphate Sodium that would be as competitive.

2625 Mr. WARRINGTON: How do they compare in area of production and distribution with soap; that is, these allied articles remaining in the sixth class?

Mr. LEEDS: The manufacture of them would naturally be in but few hands and in a limited area, and some of them are specialties and not in very general use or consumption.

Mr. WARRINGTON: Are you able to give a list of articles which

under schedule 19 were nominally sixth class and under schedule 20 were placed in the fifth class?

Mr. LEEDS: Yes, sir; there was such a schedule or list prepared.

Mr. WARRINGTON: See whether this it is (handing to witness)?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: What is it?

Mr. WARRINGTON: It is a list of articles which under schedule 19 were in the sixth class nominally and under schedule 20 were placed nominally in the fifth class. We offer this as an exhibit.

(Hereto attached and marked Exhibit G.)

Mr. WARRINGTON: Have you a list of articles of the present fifth class which are bearing commodity rates as low or lower
2626 than those of the sixth class.

Mr. COLSTON: What was that? I would like to have the question read.

(The question was repeated by the stenographer.)

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: What is this paper? (Handing to witness.)

Mr. LEEDS: That is the paper showing those articles.

Mr. COLSTON: That is a list of articles of the fifth class having rates as low or lower than sixth class?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: We offer this.

(Hereto attached and marked Exhibit H.)

Mr. WARRINGTON: What articles, if any, were taken from the sixth class of schedule 19 and placed in fifth class of schedule 20 which on January 1st were bearing commodity rates or have since been given such rates?

Mr. COLSTON: I would like to have the question read.

(The question was repeated by the stenographer.)

Mr. LEEDS: I find grape sugar; pitch, paints, earth, iron—that is, under the head of paints, if you please—earth paint, iron paint, metallic, mineral or ochre, in kegs, barrels, etc., and starch.

2627 Mr. WARRINGTON: Take starch; I believe it is nominally in the fifth class under schedule 20; is it not?

Mr. COLSTON: We object to the use of the term nominally.

Mr. WARRINGTON: Well, I do not care to press it. State whether or not it is in fact being carried at a rate or rates lower than the fifth class?

Mr. MAXWELL: We object upon the ground that the witness has no personal knowledge.

Mr. COLSTON: Of what these defendants are carrying it at.

Mr. WARRINGTON: State whether it is in the commodity list.

Mr. MAXWELL: We object upon the ground that witness has no personal knowledge, relying on what somebody has told him.

Commissioner FIFER: What knowledge have you, Mr. Leeds?

Mr. LEEDS: I have examined the commodity list.

Commissioner FIFER: He may answer subject to the objection.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Without going into detail with respect to all, or even many, of the items which have been removed from the sixth to the fifth class, what have you to say of sugar and coffee in comparison with soap as articles of freight?

Mr. LEEDS: In some respects I should view them with
2628 respect to classification certainly as not as good.

Mr. WARRINGTON: Why?

Mr. LEEDS: Because a large majority of the freight of both commodities originates at the initial points of the roads covered by this classification. Probably 80 per cent, or more of that consumed in the United States, certainly of sugar, in its original state it is controlled in few hands, either by the importers or refiners, and I believe the price even at which it is sold is controlled by the price at the refinery plus the freight rate with a fixed basis of percentage of profit, and that being the case, if that is true, there is practically no limit within the scope of reasonableness to which you might not go with respect to the rate on those items.

Mr. WARRINGTON: What items?

Mr. LEEDS: Sugar and coffee. Their character does not materially change between the originating point and the consuming point. In some respects the coffee is; may be roasted and ground and put in fancy packages. But that is I believe also done at the point of origin.

Mr. WARRINGTON: These initial points of the roads, the points of origin are where?

2629 Mr. LEEDS: The Atlantic Seaboard cities.

Mr. WARRINGTON: Are you familiar with Rule 10 of the Official Classification?

Mr. LEEDS: Yes, sir; I have read it several times and made some analysis of its effects as applied to the classification.

Mr. WARRINGTON: We will call your attention to the rule, if your honor please. I will ask Mr. Matthews to read it, so that we will have it in mind when we are talking about it.

Mr. Matthews read the rule referred to, as follows:

"10. (A.) When a number of different articles, except those covered by sections B (Provisions) and C (Dressed Beef) of this Rule, of the same class are shipped at one time, by one shipper, to one consignee and destination, in carloads, they shall be taken at the rate per 100 lbs. for such class, in carloads, and at the highest minimum carload weight provided for either of the articles, actual weight to be charged for if greater than the minimum weight. If the articles (provided with L. C. L. and C. L rating) are of more than one class, the carload rate and minimum carload weight for the articles in the highest class shall be charged on all the articles that make up the carload, actual weight to be charged
2630 for when in excess of the specified minimum weight, excepting as provided in sections B, C, and D of this Rule and Rule 7 (A); and also excepting that where the actual weight of the articles in any one class equals or exceeds the minimum carload

weight provided therefor, such articles may be charged for at the minimum carload weight (actual weight if in excess of the minimum weight) and carload rate provided for same, and the other articles will be charged for at the L. C. L. class rate to which they belong (see Note).

"NOTE.—The foregoing rule will apply only on freight from one shipper or owner, and will not cover L. C. L. shipments of property from two or more shippers combined into carloads by forwarding agents claiming to act as shippers.

"The term 'forwarding agents' shall be construed to mean agents of the carriers and also agents of actual shippers of the property, or any party interested in the combination of L. C. L. shipments of articles from several shippers into carloads at points of origin."

Mr. MATTHEWS: The next are "B" and "C" and "D." "B" and "C" referred to Dressed Beef and "D" to Bulk Meats. Do you want those?

2631 Mr. WARRINGTON: I do not think we need those. What in your judgment, Mr. Leeds, is the practical operation of that rule, Rule 10, upon the fifth class of schedule 20? How are they related and what is the effect of carrying out the rule upon the articles of the fifth class?

Mr. MAXWELL: We object to this question as not being within the *the* subject upon which the Commission granted permission to take further testimony.

Mr. BAYLESS: And not in any of the issues raised by the petition or answers.

Mr. COLSTON: I do not think this question is within the limitations prescribed. Your honor remembers how this matter came up. When the case was submitted in Washington the Commission made an expression of a desire to hear further explanation as to why soap was in the fifth class or should be in the fifth rather than sixth class, and it was agreed that each party on that point should take the testimony of not exceeding six witnesses on that matter.

Mr MAXWELL: No, that the railroads should take the testimony of not exceeding six witnesses and that Procter & Gamble should take the testimony of as many witnesses as the railroads.

2632 Mr. COLSTON: We put in testimony in New York, which I believe your honor did not hear; but the substance was that soap should be in the fifth class and justified putting it in fifth class. Now, this question is not on that point I submit. It is opening up the whole case again.

Mr. WARRINGTON: Without reading all that was stated by the Commission at the time suggestion was made to take testimony on the subject of this inquiry, I will read from what the Chairman of the Commission said on behalf of the Commission at page 1161 of the record:

"The CHAIRMAN: To repeat the question comes up in this way. It was said, 'here are a list of articles in the sixth class. You have taken out soap and put it in the fifth;' why soap rather than something else. On the other hand the suggestion has been made that they are articles better entitled to be in the sixth class than is soap.

What are the reasons? It just occurs to us that some comparison of the fifth and sixth class articles and a further development of the reasons advanced by either side as to why one article should take fifth class and another article should take sixth class may be very useful to us."

Now, what we are aiming at under this question and Rule 10 is to show how articles of the fifth class are affected by the use and operation of that rule, and it is necessary to know something about that in order to make an instructive comparison of the articles in
2633 the fifth class and of the effect of this classification upon them. It reflects upon why soap should not in our judgment have been taken out of the sixth and put in the fifth class. We are aiming to answer these questions directly. We are aiming to give you reasons, and you can never know what the reasons are unless you have the classification before you. Necessarily we must analyze these two classes and even consider them in connection with other classes to determine why soap should not have been taken out of the sixth and put in the fifth class; and to have witnesses say that in their judgment it should have been or that in their judgment it should not have been does not state any reason in itself. Yet that is all we have so far heard from the railroad companies. Now, what we want to show you is the operation and effect of this rule upon the articles with which soap is associated to the end that we may unfold to you what this classification is so far as it relates to soap. Of course we do not care for other articles in this connection except so far as the Commission has ordered a comparison, and to make a comparison we have to know what articles of the fifth class are affected by that rule and how they are affected and what bearing that has upon the soap traffic.

2634 Mr. MAXWELL: We are not denying that Rule 10 or testimony with respect to Rule 10 may have a bearing upon the issues of this case, but this further hearing was not for the purpose of opening up this whole case and showing the Commission any facts which might be deemed to be relevant to the case generally, but it was for the limited purpose of producing the testimony of experts to compare soap with articles in the sixth class or in the fifth class, and it was expressly provided by the Commission that the testimony upon that subject should be limited to a certain number of witnesses by the railroads and to the same number by Procter & Gamble.

Mr. WARRINGTON: There is no question as to number up now.

Mr. MAXWELL: I understand there is no question as to the number up, but the circumstances that the number of witnesses that were to be called was limited has a bearing upon the character of the testimony to be taken. Now, we have put in our testimony with respect to the precise limitations imposed by the suggestions of the Commission.

Mr. COLSTON: I want to say that Mr. Warrington's argument admits the correctness of our objection, for he says that he wants to unfold to you the character of this clasification; that is to
2635 say, he wants to unfold to you that soap is improperly classified in fifth class. That is what he went to Washington for.

hat is the burden he undertook when he opened this case in Wash-
gton and when he rested his case he had given his evidence on
at subject and he is confined to that and cannot go back and add
me more to what his case was in chief. The Commission said
at they wanted to hear some more reasons why soap was put in
e fifth class, not any more reason why that operated to in-
ease the rate, not any more reasons in support of the complain-
nt's claim that they are discriminated against. That is the purport
f this testimony now, and I say that is not within the limit pre-
ribed by the Commission in Washington. They confined the com-
lainant in this case to rebutting evidence; that is, evidence that
ended to show that the reasons given by the men we called to prove
hat soap was properly in the fifth class were not sound, and this
estimony does not bear on that at all.

Mr. WARRINGTON: The Commission ordered this to be opened up. Neither side had gone into this as far as the Commission thought we should and they wanted further testimony on this line, and they said they wanted to hear reasons for and against that. The
2636 railroads have given their reasons and we want to show that those reasons are not good reasons and do we not do that by showing reasons why it should not have been carried up?

Mr. MATTHEWS: If your honor please, the question has been decided by the Chairman and Mr. Commissioner Yeomans at the New York sitting favorable to our contention on this question. The gentlemen will remember that at the hearing in Washington the plaintiff at least and I think the defendants also went quite fully into the question of comparing the rates current in Official territory with those in the Western territory—that is, the territory governed by the Western Classification—and in the territory covered by the Southern Classification. The plaintiff compared the classifications and showed that soap was classified in the lowest classes in the West and in the South.

Mr. COLSTON: Not in the lowest class, but in the lowest numbered class.

Mr. MATTHEWS: That is not material. I do not depend on that. The defendants went at some length into the question as to the difference of rates, that notwithstanding the fact that the classification was practically what we claimed it ought to be in the Western territory and in the South that the rates were higher, and there was a good deal of evidence pro and con on those questions. When
2637 we got to New York we were taking testimony under the same order we are taking testimony under now, and Mr. Maxwell's client, the P. C. C. & St. L. Ry. Co., put on its General Traffic Manager, Mr. McCabe, and he was asked the general question to give reasons why soap was properly advanced from sixth to fifth class. He said very little about the physical characteristics of soap in answer, or the commercial characteristics or commercial considerations affecting the question, and he branched out immediately into the questions which had been gone into in Washington, comparing the rates west of the Mississippi and south of the Ohio and giving that very largely as his reason as an expert railroad man for saying that

soap had properly been advanced from the sixth to the fifth class, and the gentlemen will remember that he produced some extracts from tariffs there and made some considerable comparisons with the West and South of rates in Official Territory. We thought at the time he was possibly going outside of the scope of the inquiry as prescribed by the Chairman, and we interposed an objection to his going into that then, and the Chairman and Mr. Commissioner Yeomans overruled that objection. They said that when an expert wit-
2638 ness was put upon the stand to give his reasons within the scope of that order he ought not to be limited, even if he did go into questions which had been gone fully into at Washington on the original trial of the case. So I take it that if your honor ruled now as is contended by the other side you would certainly be in conflict with the Chairman and Mr. Commissioner Yeomans, for it seems to me that this question is exactly the same. If it is not already clear, we are willing to say that we expect to prove by this testimony the reasons in the mind of an expert witness why soap is more properly classified in the sixth class than in the fifth class in Official territory. Rule 10 seems to be thought by the other side as being the point of our attack. It is the opening wedge to a very much broader question which will develop by the answer of the witness and will develop the broad general ground why this witness thinks that soap has been improperly raised from the sixth to the fifth class. I am told by Mr. Macdonald that it was Mr. Grammer and not Mr. McCabe whose testimony was objected to and in regard to which our objection was overruled by the Chairman and Mr. Commissioner Yeomans in New York.

Commissioner FIFER: Would it not be well to receive the
2639 evidence subject to objection. Of course it is hardly proper for one Commissioner to rule on these questions. Remember that it is not like a trial before a jury, where testimony might get in and influence the mind and cannot be gotten out again. If when the testimony is written up, it is considered improper, it will not be considered by the Commission.

Mr. COLSTON: As this record will be read by the Commission and will go as correct unless challenged, I want to add that in looking over the testimony of Mr. McCabe I do not see any ruling of the Commission to the effect stated by Mr. Matthews.

Mr. MATTHEWS: The ruling was made, however.

Mr. WARRINGTON: And we argued the question at length.

Mr. COLSTON: I do not find in the course of Mr. Grammer's examination, nor in that of Mr. McCabe's.

Commissioner FIFER: That can all be pointed out on final argument.

Mr. WARRINGTON: An order was made long ago that arguments on objections would not be reported, and you may not find it for that reason.

Mr. COLSTON: But they are all reported in that testimony
2640 taken in New York.

Mr. WARRINGTON: We raised the objection and were overruled.

Commissioner FIFER: The testimony will be taken subject to objection.

Mr. COLSTON: Then your honor receives it subject to objections made.

Commissioner FIFER: Yes, sir. The witness may answer.

Mr. LEEDS: I would like to have the question read.

(The question was repeated by the stenographer, as follows:

"What in your judgment, Mr. Leeds, is the practical operation of that rule, Rule 10, upon the fifth class of schedule 20? How are they related and what is the effect of carrying out the rule upon the articles of the fifth class?

Mr. LEEDS: The result of that upon the articles of the fifth class as far as it is practicable for a shipper to do so is to turn it into a less than carload class. In other words, a dealer in a line of goods, such as the grocer, woodenware dealer, hardware merchant, dealer in machinery and implements, drugs and medicines and almost the entire catalogue of trade have a long list from which to select in that class upon which to make up a carload of less than carload shipments and ship it at the fifth class rate. I think

2641 in some instances there are over two hundred articles in the fifth class classification that can be used in one line of trade from which to make selections.

Mr. COLSTON: Now, we ask that that answer be stricken out. As that is his reason, it is more manifest than ever that it has no bearing properly.

Commissioner FIFER: The objection is overruled and the testimony received subject to the objection and further and full consideration by the whole Commission. If it is agreeable to counsel, we will take a recess. What is the practice as to a noon recess in the courts?

Mr. WARRINGTON: One o'clock is the court rule.

Commissioner FIFER: Then we will take a recess until quarter after two o'clock.

2642 After Recess.

2:15 P. M.

Commissioner FIFER: Gentlemen, if you are ready, we will proceed.

Mr. LEEDS resumed the stand.

Mr. WARRINGTON: Referring again to Rule 10 and its operation and effect upon Class 5, what is that operation and effect upon people who deal in several articles as compared with those who manufacture or deal in one article?

Mr. LEEDS: A dealer in one article would necessarily be obliged to ship his freight in straight carloads of one commodity, not having other articles to associate with it; while the dealer in many articles could make up his carload of an aggregation of less than carload

shipments. It has the effect of turning the tariff as applied under that classification into peculiarly a jobber's tariff, I should think.

Mr. WARRINGTON: Why would you not say it was a manufacturer's tariff rather than a jobber's tariff?

Mr. LEEDS: For the reasons that I have just stated.

Mr. WARRINGTON: What if any play does minimum car-
2643 load quantity make upon the feature you have just alluded to?

Mr. COLSTON: We make the same objection to that as we did to the other.

Commissioner FIFER: The objection will be noted. The witness may answer.

Mr. LEEDS: I do not think I quite understand what you mean.

Mr. WARRINGTON: Describe to us what minimum carload rates there are and whether you have had a list prepared.

Mr. LEEDS: I analyzed the classification with reference to the minimum carload of the fifth class schedule, and I find a large number of articles in that which are carried at 20,000 pounds. An aggregation of those articles in less than carload lots would naturally move at a minimum of 20,000 pounds at fifth class rate, which would yield on a 100 per cent. point $60.00. Then, there is still a larger number of minimum commodities or commodities taking a minimum of 24,000 pounds. An aggregation of those articles could be made up the same as the 20,000 pounds, and so on to the 30,000 pounds mentioned in the fifth class. I prepared a list of those taking less than 30,000 pounds and also prepared a list that might be used in those twenty and twenty-four thousand pound items
2644 by the dealers in several lines of goods.

Mr. WARRINGTON: What is this paper?

Mr. LEEDS: That is the paper; yes, sir.

Mr. WARRINGTON: Showing the list of articles which are found in the fifth class and would take these minimum carload quantities you mention?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: We offer this paper.

Commissioner FIFER: Let the other side see it, and if there is no objection, let it be marked.

(Hereto attached and marked Exhibit I.)

Mr. WARRINGTON: This is headed as follows: "Agricultural Implement dealers can make up carloads of all of the items in the Implement list, at 20,000 lbs., as follows:" What do you mean by 20,000 lbs. there?

Mr. LEEDS: Per car.

Mr. WARRINGTON: Do you mean that this schedule provides a minimum carload at 20,000 pounds of this class of implements?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Then I find below another list of articles at 24,000 pounds.

Mr. LEEDS: Yes, sir.

2645 Mr. WARRINGTON: There are certain implements that a dealer can put in the 20,000 pounds minimum class and certain others in the 24,000 minimum class?

Mr. LEEDS: Yes, sir; that is correct.

Mr. WARRINGTON: Then follows "Woodenware dealers." What is the minimum there? 30,000, 24,000, 20,000 and 16,000 pounds I believe on different articles.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Then I find a heading under "Rulings," which is intended to describe what?

Mr. LEEDS: That is intended to describe changes in Classification No. 20 between the issuance of it and the date upon which this paper was made out, so far as they were obtainable.

Mr. WARRINGTON: And relates to the minimum carload quantities?

Mr. LEEDS: And relates to the same thing as though it were a part of the classification.

Mr. WARRINGTON: Then I find a heading of "Machinery," which has a long list of items that can be carried in carload quantities down to a minimum of 24,000 pounds?

Mr. LEEDS: The machinery list I believe is 24,000 pounds
2646 complete. That is, I think the entire list takes a minimum of 24,000 pounds.

Mr. WARRINGTON: Then I find a heading of "Chemicals," which includes a list of minimum carload quantities of 24,000 and occasionally a 30,000, according to the articles. Do you say the same of that list as you have of the other?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And there are some 20,000 pound articles in that list.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Then I find another heading of "Liquors," which run from 24,000 pounds to 26,000 pounds, and one item—Cider, in glass—30,000 pounds minimum.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And another "Sporting Goods." They can be grouped in carload lots running from 20,000 to 24,000 pounds, according to the items. Is that right?

Mr. LEEDS: That is right.

Mr. WARRINGTON: Then I find "Groceries" at 30,000 pounds minimum, including a large number of articles. Is that correct?

2647 Mr. LEEDS: Yes, sir; I think there are eighty odd in the grocery list.

Mr. WARRINGTON: Then I find "Hardware, Stoves and Hollowware," nearly all of which I believe, if not all, are 24,000 pounds.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And also "Carpeting and House Furnishings," minimum carload lots seem to be all 24,000 pounds.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And then the last one, "Drugs, Paints, etc." the minimum carload lots run from 20,000 to 24,000 pounds, and one—cement, liquid, N. O. S., in wood—30,000.

Mr. LEEDS: That is right.

Mr. WARRINGTON: Would you look at this Exhibit "I" and state approximately the number of articles which are embraced under the different headings I have given and which can be grouped and carried in carload lots according to the minimum amounts stated there.

Mr. LEEDS: In woodenware there are 232. That number is named in the paper itself. In machinery there are 130 odd—between 130 and 140. In chemicals there are about 20. In liquors there
2648 are six. In sporting goods, such as bowling alleys, clay pigeons, Indian clubs, croquet sets, dog benches and kennels, shooting gallery targets, etc., I believe there are 14. In the grocery list there are 80 odd—between 80 and 90.

Mr. MAXWELL: Did you include soap in that?

Mr. LEEDS: Yes, sir; soap was included. Carpenters' and builders' supplies have a list of about 41 in the fifth class from which to select. Stoves and hardware 45.

Mr. WARRINGTON: Grocers handle woodenware, do they not?

Mr. LEEDS: Yes, sir. Where they handle woodenware, if the shipment were made by a man who handles those lines, he would increase his list very much from which he would make up his carloads. In fact, where a dealer mixes business, there would be an unlimited opportunity to mix carloads at the fifth class rate on an aggregation of a few hundred pounds of each article.

Mr. WARRINGTON: What have you to say of straight carloads of any one of these articles?

Mr. LEEDS: It is a generally recognized feature in fixing rates and tariffs and classifications that the carload of an individual article represents practically the one unit as a basis of working; that
2649 is, the carload is a unit, and to that measure the starting point from which to work.

Mr. WARRINGTON: In other words, are there or not many of these articles in the various lists set out in Exhibit "I" which move in carload lots, treating the article as a unit?

Mr. LEEDS: Yes, sir; there are a good many of them that do move; in fact, I should say the majority of the articles in the fifth class would move in straight carloads—from first hands at least.

Mr. WARRINGTON: Have you or not made a list of articles which in your judgment would not move in carload lots, but would have to be mixed in order to make carload lots?

Mr. LEEDS: I did make a list of something like 200 articles from the classification, embracing various classes, however—not all fifth or sixth, but largely in the fifth—it occurred to me would never move in carload quantities as an independent proposition.

Mr. WARRINGTON: Is this that list?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: We offer that as an exhibit.

(Hereto attached and marked Exhibit J.)

2650 Mr. WARRINGTON: In considering whether soap should be placed in the fifth class in carload lots, what effect has the separation of articles as found in Exhibit "I" in connection with minimum carload quantities there allowed upon soap? Is there an

advantage given to soap or to the articles which are separated and given a less minimum carload quantity privilege?

Mr. LEEDS: That would depend on whether the party was able to ship in immense quantities. If he was handling but one item, why it would give the shipper of the mixed carload quantity the advantage.

Mr. WARRINGTON: Why is that?

Mr. LEEDS: It gives the difference between 20% under third class and the fifth class rates. It has the effect of practically turning the fifth class rate into a less than carload rate.

Mr. WARRINGTON: I want to know how that works out practically, and you may give it by illustration. Suppose you take some articles which can be grouped together so as to make up a carload lot and compare them to the opportunity to move them economically with the movement of soap in less than carload lots.

2651 Mr. LEEDS: I do not know that I have any figures in my mind but I can give an illustration on some imaginary figures. Suppose, for example, that the fifth class rate from here, say, to Columbus, Ohio, was 9 or 10 cents—say 9 cents, for example. It would enable the grocery shipper to make up an aggregation of less than carload shipments embracing as many articles as he chooses to put in covered by that class at 9 cents per hundred pounds. Suppose the third class rate to be 15 cents, which is probably a very slight difference in the gradation of your figures, but if it were 15 cents, deducting 20 per cent. from third class, it would make the man who shipped one article pay 12 cents against the other man's 9 cents.

Mr. WARRINGTON: So the grocer by making up a carload of mixed articles could ship five boxes of soap at the rate of 9 cents, whereas the manufacturer making the single consignment or shipment of five boxes would have to pay 12 cents per hundred?

Mr. LEEDS: According to my illustration; yes, sir.

Mr. WARRINGTON: There is another thing which I wish to make plain, if possible: Suppose these articles that the grocer would combine went in less than carload lots, but not sufficient in quan-

2652 tity to make up a carload lot: How does the minimum carload quantity as fixed by class 5 affect the question? Suppose it is 20,000 pounds and soap is 30,000 pounds minimum?

Mr. LEEDS: Then he could not mix the soap with that carload without paying on a minimum of 30,000 pounds on the entire car, according to the rule laid down in Rule 10. On the 24,000 pound articles, leaving out the 30,000 pound items, they could make up a carload and ship at 24,000 pounds at the fifth class rate.

Mr. WARRINGTON: At 24,000 if that were the minimum?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And at 20,000 if that were the minimum?

Mr. LEEDS: Yes, sir; that is the way I read Rule 10.

Mr. WARRINGTON: Is that one of the effects of Rule 10 upon classifying articles?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: What is the paper now handed you?

Mr. LEEDS: It is a paper that I prepared for the purpose of determining the revenue which would accrue to the railroads under this Classification 20 on the higher classes according to the
2653 minimums laid down in the tariff. I applied it to the 100 per cent. rate to determine that, however the same showing would be made on the percentage points in the ratio of their per cents. But I used 100 per cent. rates to do that.

Mr. WARRINGTON: What do you mean by 100 per cent.?

Mr. LEEDS: The rates between Chicago and New York. The rate between Columbus and Cincinnati and other points in middle territory to New York would take a certain per cent. of the Chicago-New York rate.

Mr. WARRINGTON: Read that to the Commissioner so he will understand it.

Mr. LEEDS: Well, I took the first class rate, which embraces chairs, furniture frames, gas meters, a few items only, which carry a carload rate at a minimum of 10,000 pounds, first class, per car, and yields $75.00 at 75 cents per hundred.

Mr. MAXWELL: We object to this testimony, which is not within the scope of the testimony authorized by the Commission to be taken.

Mr. WARRINGTON: We think it has everything to do with it; if you will wait a minute to see its connection——

Mr. MAXWELL: We do not have to wait a minute to see its connection. It has no relation to the subject upon which the
2654 Commission directed further testimony to be taken and no relation whatever to the testimony that was taken by us.

Mr. MATTHEWS: It shows the effect of these minimum carload rules which is applicable to such a quantity of the articles in the fifth class, 20,000 and 24,000 pounds, and soap having a minimum of 30,000 pounds we claim has no place with those other articles in fifth class. We are illustrating now, first by reference to the minimum of another class, just what that difference is between the minimum of 30,000 pounds on soap at the fifth class rate and the minimum of 10,000 pounds on some other articles. It is certainly fair to make an illustration. This is an expert witness giving expert testimony as to whether soap should be in the fifth or sixth class and this is to show by way of illustration how he arrives at his opinion. It may be that he is illustrating by a somewhat exaggerated instance, but nevertheless it serves to clear the subject and show what the full meaning of the whole thing is.

Mr. MAXWELL: What whole thing?

Mr. MATTHEWS: Of the fact that so many of the articles in the fifth class have a less minimum carload weight than soap and illustrating by figures the effect of these things.

2655 Commissioner FIFER: We will take the evidence subject to objection.

Mr. WARRINGTON: Proceed now and explain it to the Commissioner.

Mr. LEEDS: In the second class carload rate we find a list of articles such as broom corn, burial cases, sewing machines, cases and cabinets, light, wood-work, feathers in bales, trunks and valises,

household goods Roots dry and church and other light and bulky furniture. There are quite a lot of articles that I have not mentioned. The minimum on these is 12,000 pounds, and 65 cents per hundred pounds, yields $78.00.

Mr. MATTHEWS: What does soap yield?

Mr. LEEDS: At the present classification and rate $90.00.

Mr. WARRINGTON: Suppose you were to fill a car with furniture. Is that comparable with soap in point of compactness and density?

Mr. LEEDS: No.

Mr. WARRINGTON: Now, that is given in the second class in this classification, is it—furniture?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And the minimum carload weight is 12,000 pounds for furniture, is it?

2656 Mr. LEEDS: Yes, sir; this class of furniture that I have mentioned.

Mr. WARRINGTON: Now, the railroad company would derive $78.00 for drawing that load from Chicago to New York or the reverse direction; is that right?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: And for hauling 30,000 pounds of soap at the fifth class rate, the minimum being 30,000 pounds, they would get $90,00? Is that right?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: But it is a carload in each case?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: But one is a good deal heavier car than the other

Mr. WARRINGTON: What have you to say in point of cubical space?

Mr. LEEDS: There is more tonnage in the car of soap than there is in the other. On the other hand it should be borne in mind that as a general rule these light and bulky articles are carried in a car which contains in cubic measurement about 50 per cent. more space; special cars and handled in a special service.

2657 Mr. WARRINGTON: That is to say, there are about 50 per cent. more of cubic space in the car carrying furiture in the illustration we are using than there is in the soap cars?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: What have you to say of the economy of operating those long 50-foot cars in which this furniture is thus carried in comparison with the cars 34 feet in length in which the soap is carried?

Mr. COLSTON: We object to this question as not competent.

Mr. MAXWELL: It only shows what testimony we are getting into. Now it is the question of expense of operating. We went all through that at Washington.

Mr. COLSTON: It opens up this case and of course we have got to put in rebutting testimony to this if this is competent.

Mr. WARRINGTON: If your honor please, you never can circumscribe the grounds which enter into the expert mind when he is estimating and attempting to state the reasons why a particular

article should not be in a particular class. Now, all these reasons combined will be considered by the Commission in the end. You may give more weight to some than to others, but certain it is that you want to look into the expert experience or knowl-

2658 edge that there is to be obtained on the subject. Now, one thing that your order implies is that neither side explained the reasons why soap was taken out of the sixth and put in the fifth class to your satisfaction. We are endeavoring to do that, Wherever reasons are to be found bearing on that I take it that the order covers those reasons, and if in the mind of a man who spent a life in the car traffic these things bear upon it, I should think the Commission would want to hear it.

Mr. COLSTON: The further we go into this matter the more obvious it is that the testimony this gentleman is giving has nothing to do with the propriety of putting soap in the fifth class. It is simply an attack upon Rule 10, which would be as applicable to soap in sixth class as in the fifth class.

Commissioner FIFER: We will take the testimony subject to objection.

Mr. MAXWELL: If it is important, if your honor please, to hear evidence on this further taking of testimony as to the cost of operating 12,000 pound furniture cars as compared with 30,000 soap cars, it is important that we should know the facts about it. We may not agree with the statement of this gentleman as to that matter, and that opens up a question of fact and we want the fact according to the truth and it may be necessary for us to put in testimnoy on the subject.

2659 Commissioner FIFER: Of course the inquiry here is why soap was taken from sixth class and put in fifth class, and it is a little difficult to determine just what testimony bears upon that question and what testimony does not. Of course this witness is an expert witness and so far as he is concerned it must rest largely in his judgment, and that has weight or is without weight according to its reasonableness or unreasonableness. I think we had better take a pretty liberal view of the matter and take the testimony subject to objections. Of course the law under which we are acting allows one Commissioner or the whole or full Board to take testimony, and one Commissioner rules out testimony or declares it to be incompetent rather reluctantly when the full Commission is to rule upon it. If it is not deemed to be proper testimony when the full Commission come to determine the matter it will be set aside, any portion of it that is not competent. Possibly some of this testimony is a little remote and has but very slight bearing on the question as to why soap was taken from one class and put in the other, and yet we are here to take the testimony and there is but one Commissioner present and I think we had better be a little liberal and let it in subject to objection of counsel and subject to review by the whole Commission.

2660 Mr. MAXWELL: Our suggestion is it must be subject also to our opportunity to produce testimony upon the points that are being developed.

Commissioner FIFER: Of course if he goes outside of the question and into these collateral questions which bear upon the main question rather remotely, you might have the right possibly to explain certain things in regard to that.

Mr. WARRINGTON: As I understand your honor, he can answer the question.

Commissioner FIFER: It is admitted subject to objection and subject also to review by the full Commission.

Mr. WARRINGTON: I will ask the reporter to repeat the question.

(The question was repeated by the stenographer, as follows: "What have you to say of the economy of operating those long 50-foot cars in which this furniture is thus carried in comparison with the cars 34 feet in length in which the soap is carried?"

Mr. MAXWELL: We object to that upon the ground that it is not within the subject upon which the Commission authorized further testimony to be taken, nor has the witness shown himself to have knowledge of operating expenses.

2661 Mr. LEEDS: The only answer I have to make to that question is in a general way. It is like this: It is certainly obvious to anyone at all familiar with the service that it is much more convenient and much more desirable to handle an equipment of uniform size than it is of a mixed or variety of sizes.

Mr. WARRINGTON: Of cars.

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Is that or not the result of your observation and experience in railroad operation?

Mr. LEEDS: I have heard a great deal of complaint by trainmen at varous times in my experience about the handling of what you might call odd equipment; that is, equipment that does not fit.

Commissioner FIFER: Does it add to the expense?

Mr. LEEDS: I don't know.

Mr. COLSTON: Can you say whether it costs more to haul a train of thirty cars 50 feet in length from New York to Chicago than it would to haul a train of an equal number of cars each car 34 feet long?

Mr. LEEDS: I say I don't know.

Mr. COLSTON: Do you know whether these 50-foot furni-
2662 ture weigh as much or any more than the 34-foot cars made for general traffic?

Mr. LEEDS: The first furniture cars constructed I think weighed tolerably uniformly with the ordinary size of box car, but if you come to compare them now, as far as my observation goes, with a car that would carry fifty or sixty tons, they do not weigh as much, unless they are made to carry as much weight, and then they would weigh more.

Mr. COLSTON: Which would not weigh as much?

Mr. LEEDS: The furniture car. It is not used ordinarily as much as the other in heavy traffic.

Mr. WARRINGTON: Is it or not a fact that a locomotive will draw

a larger train in weight which is close to it than one which is strung out at greater length from it?

Mr. COLSTON: We object to that.

Mr. LEEDS: I suppose that question could be answered yes.

Mr. COLSTON: You have no knowledge as an expert on that any more than an ordinary observer, have you?

Mr. LEEDS: It is obvious that a long train would pull heavier than a short one.

Mr. COLSTON: You are talking about an empty train.

Mr. WARRINGTON: I am talking about whether it is empty
2663 or whether it is loaded. Have you finished all you wanted to say on the subject of minimums? I wanted you to pursue that.

Mr. LEEDS: In the second class I had not finished. There is another minimum applicable to the second class. It applies to incandescent bulbs, carboys, empty; carboys, naked; glass chimneys, demijohns; electric globes and lamps generally, of a minimum of 12,000 pounds with a 15 per cent. reduction below the second class rate, making the carload yield $66.00.

Mr. WARRINGTON: Between the 100 per cent. points?

Mr. LEEDS: Yes, sir. Here are steam yachts and wool, window and door frames in second class with a minimum of 10,000 pounds yielding $65.00 between 100 per cent. points. Then there is a list of articles in the third class taking a minimum of 16,000 pounds, composed of finished furnitures, glassware and kindred articles, boxes and paper balls—(paper boxes and paper balls)—a considerable list of paper articles, at 16,000 pounds. At the third class rate they are 50 cents, which yields $80.00 between 100 per cent. points. Then comes empty barrels and a large list of cooperage and woodenware—some items of woodenware and kindred articles—at a minimum of 12,000 pounds, at 50 cents, yielding $60.00 between 100 per cent. points. Then comes a list of articles in the third class at 20,000 pounds, consisting of liquids, dyes, butter and cheese, colorings, chemicals, drugs and
2664 medicines and patent medicines, galvanized iron cornice, edge tools, bitters, electrical instruments, and extracts generally, in glass, yielding $100 between 100 per cent. points. My general observation or analysis of the classification has been that it holds practically universally good in the first, second and third classes that the carload rate yields less revenue than the fifth class 30,000 pound car, and the same is true of the fourth class 24,000 pound car and the fifth class 24,000 pound car.

Mr. WARRINGTON: Suppose you take starch, which I believe is nominally in the fifth class, yet practically and actually in the commodity class: Could you tell us what the minimum carload there is and what it would yield between 100 per cent. points—Chicago to New York?

Mr. LEEDS: Yes, sir; the minimum—it has a commodity rate that is below sixth class.

Mr. WARRINGTON: I understand that.

Mr. LEEDS: The minimum carload is 30,000 pounds, and it yields, at the rate of 15 cents, $45.00.

Mr. WARRINGTON: In other words, it would cost $45.00 to move 30,000 pounds of starch between Chicago and New York. Is that right?

2665 Mr. LEEDS: That is according to my observation of the classification.

Mr. MAXWELL: You do not mean that it costs that. You mean that is the freight rate.

Mr. WARRINGTON: Yes, sir. I did not mean cost to the railroad. I meant cost to the shipper. The cost to the shipper is $45.00; that is right, is it?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: As against $90.00 for 30,000 pounds of soap between the same points?

Mr. LEEDS: That is the difference; yes, sir.

Commissioner FIFER: That is regarding soap as in fifth class?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Suppose soap were in sixth class, what would it yield to the company, the railroad, between these two points?

Mr. LEEDS: The rate would be 25 cents per hundred pounds with a minimum of 30,000 pounds.

Mr. WARRINGTON: As against $45.00 for the same quantity of starch?

Mr. LEEDS: Yes, sir.

2666 Commissioner FIFER: And soap $90.00 in the fifth class?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: What is there about or connected with starch that should place it nominally in the fifth class with soap, and yet give it the advantage practically of a commodity rate and this difference in cost of carriage? Is there anything?

Mr. LEEDS: The usual plea for that has been that it is a corn product, and along with other cereal products should take the same rate, and I think there has been some mention—I think I read it in the testimony—of some export business.

Mr. WARRINGTON: Well, what have you to say on the subject?

Mr. LEEDS: Well, I do not say anything as far as the export business is concerned. I would take care of it with a commodity exception if it were necessary to make a lower rate.

Mr. WARRINGTON: What, if any necessity in your judgment is there for affecting domestic rates if you were to give the export portion a commodity rate?

Mr. LEEDS: Not any.

Mr. WARRINGTON: What have you to say by way of comparison of the two articles, starch and soap, as freight articles in the domestic traffic?

2667 Mr. LEEDS: I would rather handle the soap so far as that goes than the other; and so far as the general distribution of their manufacture, I should think that one is as widely distributed as the other; I mean as to manufacture, and there should be no ma-

terial difference. They generally move together to the same trade so far as domestic uses are concerned.

Mr. WARRINGTON: What about double hauls?

Mr. LEEDS: Well, starch would not give any double haul, as it is usually manufactured either at the point of origin or some point in transit and generally a transit rate is made on manufactured cereals. Whether it applies to starch I am not advised; I presume it does. It does to other commodities.

Mr. WARRINGTON: Is it practicable to ship the grain east from the west, manufacture it into starch, and ship it back into the corn belt?

Mr. LEEDS: I should not think so.

Mr. WARRINGTON: Why?

Mr. LEEDS: Because you are adding expense that would be avoided by the manufacture of the article at the point of origin; that is, the point where the corn originates, or nearby or in transit.

Mr. WARRINGTON: When you speak of the point in tran-
2668 sit you mean, I take it, some point between the corn belt and the Eastern Seaboard.

Mr. LEEDS: And the market point of the starch.

Mr. WARRINGTON: Now, is there a double haul to soap considering the materials out of which it is manufactured and all connected with it?

Mr. LEEDS: The manufacturer of soap would naturally be obliged to bring together the materials out of which it is manufactured. He certainly does not have them in hand; and to that extent it would be a double haul.

Mr. WARRINGTON: Of course you refer to the soap manufacturer who expects to distribute his goods.

Mr. LEEDS: Certainly. The man who did not ship his goods would have occasion for a classification.

Mr. WARRINGTON: In view of the facts you have given and of your experience as you have stated it, what reasons were there for taking soap out of the sixth class and putting it in the fifth class; or, to put it in other words, what reasons were there for not doing so?

Mr. LEEDS: I should think that the long acquiescence of the rail-
roads to a sixth class rate was a very good reason; for a suf-
2669 ficient length of time to establish a business, to reach out and acquire distributing territory and to establish business relations with your competitors in the same line of trade, a change in rates creates changed relations as between you and your competitor in business.

Mr. WARRINGTON: In the soap business?

Mr. LEEDS: In the soap business; yes, sir. For example, if you had been shipping to a point in competition, say, in the East at —well, I can make a better illustration West than in the other direction; I am better acquainted. If you were in competition with Chicago or St. Louis dealers or manufacturers in the business and a change in rate or classification would change your relations to them, that would be one very good reason because in this case it becomes a competitive matter with the railroads here; that is, between here and

ie Mississippi River. Then if you take it in the other direction, here the haul would be wholly within the limits of the Central raffic or in the limits of this Official Classification, it would advance your rate 2 or 3 cents or 3 or 4, and change your relations with our competitor in business; that would be another reason, or would be a very good reason in the same line; and it strikes me that
670 the tenacity with which railroads adhere to their differentials as between each other would be a pretty good argument at ast for not changing the relations between dealers whom they erve.

Mr. WARRINGTON: I do not know what you mean by "differentials s between the competitive railroads themselves.

Mr. LEEDS: Well, the rate, say, from Chicago to New York is a ertain figure; the rate to Philadelphia would be 2 cents less, I beieve, and Baltimore 1 cent less than Philadelphia. Those are the lifferentials. I think those have been in effect and almost uniersally as to their application ever since I can remember; that is, for ome time; at least ever since I knew anything of the railroad serice. The differentials as between Chicago and the Mississippi River crossing points have been in effect without change I think for ifteen or twenty years, and I do not think it would be possible to hange those—not without a big railroad war at least.

Mr. WARRINGTON: Now, if I understand that, it is a difference etween shipping points which is maintained by the railroads which re in competition in reaching those points going to and from certain ther points. Is that right? For instance, let me take St. Louis and Chicago to points along the Missouri. What difference
2671 is there—I believe you call it a differential—as between the cost of carrying articles from Chicago to points on the Missouri River and from St. Louis to the same points?

Mr. LEEDS: The difference between the rate varies with the class to which the rate applies, and it begins with a difference of 20 cents on first class and runs down to 5 cents on lower classes.

Mr. WARRINGTON: Now, you say those differentials have been preserved for twenty years to your knowledge?

Mr. LEEDS: So far as I know they have been preserved so long as I have been in the service.

Mr. WARRINGTON: They are to protect whom?

Mr. LEEDS: They are to protect the markets. That is, the market on the Mississippi River is in competition with Chicago. They are also to equalize,—which means the same thing as protection, I presume—the rates on traffic originating east of the Mississippi River and crossing that river and going to points beyond, whether they pass through some junction point east of the river or are delivered by the Eastern line at the east bank of the river. They are used as equalizers as between railroads on competitive traffic.

Mr. WARRINGTON: That is, traffic which is competitive as between the railroads?

2672 Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Now, the same principle of equaliza-

tion or protection prevails in the East as you have described in the West, does it?

Mr. LEEDS: Yes, sir; I so understand it. The tariffs so indicate it. I have examined them and that is the result of my examination.

Mr. WARRINGTON: How does one find this out? Do these railroad companies promulgate a rule to display this to the public, or is it rather found by a comparison of the freight rates themselves by anyone who is able to interpret them?

Mr. LEEDS: It is a principle which applies in all the transactions which occur between the railroads with respect to the traffic at these various points, and there is, I believe, universally no deviations from that.

Mr. WARRINGTON: Do they display these differentials by rules or placards?

Mr. LEEDS: Yes; there is a rule probably dating so far back that nobody can dig it out.

Mr. WARRINGTON: How does one ascertain what the differentials are then?

Mr. LEEDS: They are published. I believe the differentials
2673 themselves are published in the tariff now.

Mr. WARRINGTON: That is to say, by comparison of the prices?

Mr. LEEDS: They are certainly published by comparison of rates.

Mr. WARRINGTON: Have you made freight rates to the East, from the West to the East?

Mr. LEEDS: Not recently, but I have.

Mr. WARRINGTON: Was that part of your business?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: To New York, Philadelphia, Baltimore, and Boston?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Suppose, then, in view of the constancy of these differentials which are employed to protect the railroads in their own competitive work, what have you to say of this classification, say, as it applies to soap where the less than carload lots which are shipped out of New York are virtually given fourth class rates, while less than carload lots shipped out of Cincinnati are given only 20 per cent. less than third class rates?

Mr. LEEDS: I examined quite a number of the tariffs ap-
2674 plying from New York and applied figures to them, and my observation was that by the application of the 20 per cent. below third class it pretty generally reduced the rate back to the fourth class figure.

Mr. WARRINGTON: In less than carload lots?

Mr. LEEDS: In less than carloads lots. One rule, or proviso in the rule which provided for the 20 per cent. less than third class was that it should not be less than the fourth class rate. While that was true from New York to a large territory in the direction of New England, the 20 per cent. reduction of third class rate from here did not bring the figure back to the fourth class rate. In other words, it made more difference than existed before the application of the present tariff.

Mr. WARRINGTON: Then as a result is it or not true that the effect upon soap here is to change the differentials or the relations—whatever we may call them—between soap manufacturers and dealers whom the railroad companies are serving while not affecting the differentials which protect the companies as between themselves?

Mr. LEEDS: It produces no effect upon their differentials.

Mr. WARRINGTON: That is, as between the railroad companies?

Mr. LEEDS: Yes, sir.

2675 Mr. WARRINGTON: Does it as between those they are serving?

Mr. LEEDS: Yes.

Mr. WARRINGTON: In view of the articles which were placed nominally in the sixth class and actually given commodity rates below that class, many of which, as you have described, were allied to soap as freight articles—in view of the desirability of soap as a freight article, and also in view of other things you have stated, do you see any reason why soap should have been taken out of the sixth class and put into the fifth class?

Mr. WARRINGTON: No, I consider it one of the best, if not the very best, article in packages to be carried under the classification. It should have the most favored rate made to any manufactured article. It is more desirable than most of the items which I mentioned that are in sixth class nominally, because it has a larger tonnage; the package is convenient to handle; the value is cheap, and the convenience in handling it in a general way, so far as I can see, by anything that would apply in the making of a classification makes it an exceptionally desirable article to handle as freight; while the other articles in sixth class are largely specialties that are ob-

2676 viously of not a very large tonnage—not very many of them—and so far as convenience in handling is concerned they are not as good as soap.

Mr. WARRINGTON: Is soap at home in the fifth class, or has it been taken away from its natural associations and the low-grade freight rates it deserves, comparing it with the articles that were taken up there and are there in the fifth class?

Mr. LEEDS: There are other articles in the fifth class that soap would be at home with and there are articles in the sixth class also.

Mr. WARRINGTON: Are there any articles in the fifth class under schedule 20 which deserve as low a rate of freight as much as soap?

Mr. LEEDS: I call to mind canned goods, and I had in mind canned goods when I gave the other answer. I think they are desirable freight—probably not so much so as soap, because they are more liable to damage and to do damage.

Mr. WARRINGTON: Taking the whole question into consideration, do you say soap belongs in the fifth or sixth class?

Mr. LEEDS: Taking the whole question into consideration, it belongs in sixth class. I think from reasons I have stated with respect to this Rule 10 and the facility for mixing carloads that has more of a bearing in my mind than the other.

2677 Mr. COLSTON: That is, it has more influence on the answers you have given than any one thing?

Mr. LEEDS: Not on all the answers I have given. It would on the matter of classification of soap.

Mr. COLSTON: It has more bearing on your mind with reference to the classification of soap than any other thing?

Mr. LEEDS: The classification which exists to-day is a discrimination; it produces a discrimination, against the manufacturers of single articles.

Mr. WARRINGTON: Do you know of any article, Mr. Leeds, which has as many origins and as many destinations as soap, considering in that connection the tonnage that is actually carried?

Mr. LEEDS: According to my observation, I should think it was equal to any, if not superior. I would not make a positive statement on that, but it seems to me it would be borne out.

Mr. WARRINGTON: I wish to ask you another question: Considering even the advantages of the railroads themselves, what have you to say in that respect of the placing of soap in the fifth from the sixth class? Where do you as a railroad man think that the railroad companies would derive the greatest profit, whether it be in the sixth or the fifth class?

2678 Mr. LEEDS: To advance the rate where it imposes a burden upon one shipper while his competitor is not affected likewise would curtail the limit of his distribution and reduce the revenue derived from his business of course.

Mr. WARRINGTON: Applying that statement, what in your judgment would be the greatest advantage to the railroad companies, to have soap in the sixth class or to have it in the fifth class?

Mr. LEEDS: If I represented a railroad in the Central Territory, I would want it in sixth class.

Mr. WARRINGTON: Why?

Mr. LEEDS: Because I think it would give me more revenue, better business and wider distribution.

Mr. WARRINGTON: You may cross-examine.

Cross-examination:

Mr. MAXWELL: What business are you engaged in now, Mr. Leeds?

Mr. LEEDS: I am living on my farm near Batavia.

Mr. MAXWELL: Are you farming?

Mr. LEEDS: I am overseeing the job; yes, sir.

Mr. MAXWELL: How long have you been engaged in that business?

2679 Mr. LEEDS: Three years.

Mr. MAXWELL: What were you engaged in immediately before you went to farming?

Mr. LEEDS: I was Traffic Manager of the Business Men's League of St. Louis.

Mr. MAXWELL: What year did you leave that?

Mr. LEEDS: I left there three years ago.

Mr. MAXWELL: How long were you in that position?

Mr. LEEDS: I was there two years.

Mr. MAXWELL: What were your duties in that position?

Mr. LEEDS: To have general supervision of the interests between the merchants and railroads with respect to the business of the city of St. Louis.

Mr. MAXWELL: That was an association of merchants?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: And they employed you?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: To look after what they supposed to be their interests as against the railroads?

Mr. LEEDS: Not especially against them, but with them.

Mr. MAXWELL: I suppose you were not employed to look after the interests of the railroads.

2680 Mr. LEEDS: Not there; no, sir.

Mr. MAXWELL: Did you have anything to do with the making of freight rates there?

Mr. LEEDS: Nothing to do with the making of freight rates, only so far as I dealt with freight rates which affected business between the merchants and the railroads.

Mr. MAXWELL: Give us an illustration of what you had to do there in looking after the interests of merchants.

Mr. LEEDS: I occasionally went to New York with respect to rates. The bridge toll was one matter I dealt with and the grain rates east and west and on the Mississippi River, and various items of that character.

Mr. MAXWELL: About the bridge tolls, to try to get bridge tolls reduced?

Mr. LEEDS: No; not to get them reduced, but to get them removed.

Mr. MAXWELL: Altogether?

Mr. LEEDS: Yes, sir, literally.

Mr. MAXWELL: About the grain rates, to get them reduced?

Mr. LEEDS: To equalize the grain rates with respect to the Gulf, New Orleans, the East, and the Mississippi River.

Mr. MAXWELL: That was to get them reduced?

2681 Mr. LEEDS: No, not specially reduced; to get them adjusted.

Mr. MAXWELL: To get them increased?

Mr. LEEDS: I did not say increased.

Mr. MAXWELL: How did you attempt to have the grain rates affected if you did not attempt to have them either increased or reduced?

Mr. LEEDS: I expect we were working with reference to grain rates as much in the interest of the lines east of the Mississippi River as we were to get them reduced in any direction. The idea was to maintain the St. Louis market, to get an adjustment or treatment as between the movement to the Gulf and to St. Louis.

Mr. MAXWELL: So far as eastern lines were concerned, you were endeavoring to point out to them that if they did not give the rates you requested that the Gulf would get the business?

Mr. LEEDS: It did not require anything of that kind. The Gulf was getting the business at the time these things took place. As long

as we got the business we did not disturb the eastern lines or as long as it came to our market.

Mr. MAXWELL: What did you go to New York for? About the grain rates?

Mr. LEEDS: I did not say I went to New York about the grain rates.

2682 Mr. MAXWELL: Where did you go?

Mr. LEEDS: We held our meetings occasionally in St. Louis.

Mr. MAXWELL: With whom?

Mr. LEEDS: The lines terminating at St. Louis from this direction as well as the lines south and west.

Mr. MAXWELL: Now, when you had your meetings with the lines you say you met at St. Louis, you wanted them to change the rates? Was that the purpose of your meeting?

Mr. LEEDS: The purpose of our meeting would have been to get the rates advanced to the Gulf if possible.

Mr. MAXWELL: By the Eastern lines?

Mr. LEEDS: Not by the Eastern lines; I was not dealing altogether with the Eastern lines.

Mr. MAXWELL: Wont you tell us without me asking you further questions what it was you tried to get the Eastern lines to do with reference to the grain rates?

Mr. LEEDS: The Eastern lines attended the meeting to secure, if possible, a proper adjustment so as to equalize the competition which existed between the movement of grain east and the movement of grain to the Gulf ports, and they were probably as much interested in that as we were. It was an equalization of competition, if that is what you want to get at.

2683 Mr. MAXWELL: And in order to accomplish that result, what did the Eastern lines have to do? What did you request them to do?

Mr. LEEDS: I made no particular suggestion as to what they should do. They knew the necessities of the case when the conference was over to govern themselves according to whatever conclusion was reached at the meeting.

Mr. MAXWELL: What conclusion was reached about rates on the Eastern lines?

Mr. LEEDS: The Eastern lines, I believe, concluded to meet the competition as far as possible, and did.

Mr. MAXWELL: That is, to reduce the rates? Did they reduce them to meet the competition?

Mr. LEEDS: To some extent I believe they did. They carried some business.

Mr. MAXWELL: The necessity in order to get the business was to reduce the rates, was it?

Mr. LEEDS: I presume they had to reduce the rates.

Mr. MAXWELL: And they did reduce them?

Mr. LEEDS: I presume they did. I did not see their quotations to the seaboard, but they carried business, and they would have to reduce the rates to get it.

2684 Mr. MAXWELL: What was the necessity for that reduction? What brought it about?

Mr. LEEDS: Competition.

Mr. MAXWELL: Water competition?

Mr. LEEDS: No.

Mr. MAXWELL: What was it?

Mr. LEEDS It was not water competition.

Mr. MAXWELL: What was it?

Mr. LEEDS: I presume that the primary cause might have been water competition. At least, it was so asserted. The rail lines, however were more competition than the water.

Mr. MAXWELL: Was this for the purpose of having the railroads maintain uniform rates or to get them to reduce rates?

Mr. LEEDS: We were endeavoring to get an adjustment which would bring a certain amount, or at least our share, of the grain traffic to that market.

Mr. WARRINGTON: To St. Louis?

Mr. LEEDS Yes, sir.

Mr. MAXWELL: And that adjustment it was thought could be accomplished by reducing rates?

Mr. LEEDS: I did not say so. I said adjustment. It might be either way.

2685 Mr. MAXWELL: Tell us whether the purpose of that meeting was to have the rates advanced or reduced?

Mr. LEEDS: My purpose of that meeting was to get an adjustment of rates which would give us our share of the traffic.

Mr. MAXWELL: Was it to get a change of rates?

Mr. LEEDS: Such an adjustment as would give us our share of the business.

Mr. MAXWELL: Won't you tell us whether it was to get a change of rates, or did you want them to remain as they were?

Mr. LEEDS: I wanted them adjusted to neutralize the competition between ourselves and other markets.

Mr. MAXWELL: When you wanted the rates adjusted you wanted them reduced?

Mr. LEEDS: I did not care whether they were reduced or advanced.

Mr. MAXWELL: You didn't?

Mr. LEEDS: No.

Mr. MAXWELL: What did the adjustment involve, then?

Mr. LEEDS: The adjustment finally involved a reduction in rate.

Mr. MAXWELL: How much?

2686 Mr. LEEDS: I do not remember the amount.

Mr. MAXWELL: Can you tell us anything about the extent of that reduction?

Mr. LEEDS: I do not remember the amount, I say.

Mr. MAXWELL: What business were you engaged in prior to your connection with this traffic association, the Business Men's League in St. Louis?

Mr. LEEDS: I was Traffic Manager of a similar association in California, at San Francisco.

Mr. MAXWELL: Immediately prior to your connection at St. Louis?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: For how long?

Mr. LEEDS: Three and a half years, or three years and three or four months, to be more exact.

Mr. MAXWELL: What was your business before that?

Mr. LEEDS: I was Freight Traffic Manager of the Missouri Pacific and the Iron Mountain railroads.

Mr. MAXWELL: When did that cease?

Mr. LEEDS: That ceased in 1891.

Mr. MAXWELL: And since 1891 you have not been in the railroad service?

2687 Mr. LEEDS: Not directly in the railroad business. In California, in connection with the Traffic Association of California, we organized and operated a line of clipper ships around Cape Horn and a steamship line between San Francisco and Panama, with which I had more or less to do.

Mr. MAXWELL: Was that for the purpose of affecting the rates of the railroads?

Mr. LEEDS: That was for the purpose of doing business by sea to and from California.

Mr. MAXWELL: Was that on account of the rail rates?

Mr. LEEDS: I do not know as it was especially.

Mr. MAXWELL: Was it for the purpose of getting bigger rates or smaller rates?

Mr. LEEDS: It was for the purpose of getting an adjustment of rates that would be satisfactory to merchants of San Francisco.

Mr. MAXWELL: I suppose the adjustment that they were after was an increase of rates, was it?

Mr. LEEDS: Well, no, not to any alarming extent.

Mr. MAXWELL: Did the Business Men's League continue in operation after you quit it?

Mr. LEEDS: At St. Louis?

Mr. MAXWELL: Yes.

2688 Mr. LEEDS: Not as the Business Men's League, but they made consolidation with the Merchants' Exchange over there and still continue the organization under practically the same auspices as I worked under there.

Mr. MAXWELL: Why did you sever your connection with it?

Mr. LEEDS: Because the Business Men's League as such practically went bankrupt, and I failed of re-election in the Merchants' Exchange.

Mr. MAXWELL: Do you know what territory is covered by the Official Classification?

Mr. LEEDS: In a general way.

Mr. MAXWELL: Did you ever have any connection with the transportation business in that territory?

Mr. LEEDS: Only so far as my dealings with the connecting lines made it so.

Mr. MAXWELL: What dealings did you have with connecting lines?

Mr. LEEDS: Such as any road connecting with another road might ave.

Mr. MAXWELL: You mean when you were with the Missouri Pa- ific?

Mr. LEEDS: Yes, sir.

689 Mr. MAXWELL: And prior to that time?

Mr. LEEDS: Yes.

Mr. MAXWELL: But subsequent to that time you have had no such onnection?

Mr. LEEDS: No, sir; not subsequently.

Mr. MAXWELL: That is, since 1891?

Mr. LEEDS: Since I severed my connection with the Business Men's League. We had more or less dealings with the lines at that ime.

Mr. MAXWELL: Did you ever have anything to do with the mak- ng of any classification?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: What?

Mr. LEEDS: I used to be a member continually of the Western Classification Committee, and I was a member of the Committee which undertook to make a universal classification some years ago.

Mr. MAXWELL: When was that?

Mr. LEEDS: My recollection of that is that is was about ten years ago.

Mr. MAXWELL: Did you withdraw from that Committee?

Mr. LEEDS: Yes; I was Chairman of the Transcontinental

2690 Association at that period, and we were directed to resign from our connection with that Committee before the work was completed.

Mr. MAXWELL: Why?

Mr. LEEDS: Because the Western roads did not want the uni- versal classification.

Mr. MAXWELL: Why?

Mr. LEEDS: Because they did not believe it would suit their busi- ness.

Mr. MAXWELL: Did they think the Eastern rates were too high or too low.

Mr. LEEDS: They did not consider the question of whether rates were high or low; It was classification.

Mr. MAXWELL: What was there about the classification of the Eastern lines that did not meet the interests of the Transcontinental lines?

Mr. LEEDS: Well, so far as Transcontinental Association business is concerned it is carried largely by commodity tariffs, and I do not think any of those roads that were members of the Western Classi- fication Committee finally wanted the universal classification.

Mr. COLSTON: Uniform Classification.

Mr. LEEDS: Uniform Classification, I will put it.

2691 Mr. MAXWELL: You say, then, it was because the condi- tions were different on the Transcontinental lines, and what I want is a little more particularly the difference to which you refer.

Mr. LEEDS: I will tell you as near as I can. The western business

has been handled a good many years, in fact, as long as I have known anything about it, on a system of tariffs which embraced as special tariffs or special columns a greater number of classes than are carried in the eastern classification; in fact admitting of a wider distribution practically of the traffic as to the making of rates than was provided in the proposed Uniform Classification, and they did not think that the radius was broad enough or wide enough to take in their business without making too great a change.

Mr. MAXWELL: Then you recognize that the conditions that prevail in one part of the country may be entirely different from those in another?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: And that a classification that would suit one would not suit another?

Mr. LEEDS: That is right.

Mr. MAXWELL: And rates that would suit one would not suit another?

2692 Mr. LEEDS: That is correct.

Mr. MAXWELL: Did you have anything to do with the classification of soap with the Transcontinental lines?

Mr. LEED: I do not recall that we had it under special consideration. We undoubtedly classified or rated it.

Mr. MAXWELL: Where did you classify it?

Mr. LEEDS: We classified it in the Western Classification as fifth class.

Mr. MAXWELL: What else was there in that class?

Mr. LEEDS: So far as that class was concerned, it embraced a large number of articles.

Mr. MAXWELL: Well, give us some of them.

Mr. LEEDS: It embraced all of the items of heavy groceries.

Mr. MAXWELL: Sugar?

Mr. LEEDS: Yes.

Mr. MAXWELL: Coffee.

Mr. LEEDS: Yes. Canned goods.

Mr. MAXWELL: Cereal products?

Mr. LEEDS: No, sir.

Mr. MAXWELL: What class were cereal products?

Mr. LEEDS: In fact, I think our cereal products as you classify them now were not included in one general list.

2693 Mr. MAXWELL: Was starch in your fifth class?

Mr. LEEDS: I think it was.

Mr. MAXWELL: Can't you give us some other things?

Mr. LEEDS: There was a large list of the iron goods in that class.

Mr. MAXWELL: How long did that classification just mentioned of transcontinental lines in which starch was placed in fifth class continue?

Mr. LEEDS: Were you questioning me with reference to the Transcontinental Classification?

Mr. MAXWELL: Western Classification.

Mr. LEEDS: Oh, those Western Classification meetings took place periodically as yours do here, but those items we maintained in the

same class so far as the staple commodities were concerned pretty universally right along, I think.

Mr. COLSTON: How many years?

Mr. LEEDS: As many years as I knew anything about the classification, so far as my recollection goes.

Mr. COLSTON: For fifteen years, would you say.

Mr. LEEDS: I would not say.

Mr. COLSTON: Or for ten years?

Mr. LEEDS: Nor for any number of years. I say they were pretty generally maintained in one class.

2694 Mr. COLSTON: In your experience?

Mr. LEEDS: Yes, sir. There may be an exception to that in the records which I do not remember.

Mr. MAXWELL: Do you remember that soap was ever in any other than the fifth class during your connection with the Western roads?

Mr. LEEDS: I do not believe it was. If it was it was reduced.

Mr. MAXWELL: You mean if it was in any other class, it was in a higher class?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: How many classes did you have?

Mr. LEEDS: We had in the figured classes five. Then we had A, B, C, D, and E in the lettered classes, which covered various commodities. The agricultural implements I remember were in Class A in carloads.

Mr. COLSTON: You had five numbered classes and how many lettered?

Mr. LEEDS: Five.

Mr. COLSTON: Then ten classes all together.

Mr. LEEDS: Yes, sir. Well, besides that there was a lumber column and a salt column, which made practically twelve.

Mr. COLSTON: That is, twelve all together?

2695 Mr. LEEDS: In the general tariff; yes, sir.

Mr. MAXWELL: How did the rates compare with rates in Central Territory?

Mr. LEEDS: They were higher.

Mr. MAXWELL: How much higher?

Mr. LEEDS: I would not undertake to say how much higher, but they were higher by a good deal. I never made just that comparison and cannot tell you.

Mr. MAXWELL: Were they not about double?

Mr. LEEDS: I should not think so; that is, taking the two tariffs simultaneously, at the same period, I should not think so.

Mr. MAXWELL: Comparing fifth class in the Western with fifth class in the Central?

Mr. LEEDS: It depends on the place, I presume; the application of the test might have been even more than double if you went as far west as the Rocky Mountains.

Mr. MAXWELL: Take it to Kansas City.

Mr. LEEDS: Do you mean from Chicago?

Mr. MAXWELL: Yes.

Mr. LEEDS: Well, that is 500 miles—no, it was not double.

Mr. MAXWELL: What was the rate fifth class from Chicago
2696 to Kansas City, do you remember—500 miles?

Mr. LEEDS: I think 25 cents.

Mr. MAXWELL: Do you know what the rate from Chicago to New York was fifth class?

Mr. LEEDS: I know what it is now.

Mr. MAXWELL: Then I mean.

Mr. LEEDS: I think it has been 30 cents for a good while.

Mr. MAXWELL: What is the comparative distance?

Mr. LEEDS: The comparative distance so far as the adjustment of the tariff was concerned would not cut any figure in that.

Mr. MAXWELL: Please answer my question.

Mr. LEEDS: The distance, I believe, is by the short line from Chicago to New York 912 miles. That is my recollection of it; I am not positive.

Mr. MAXWELL: Did you have any special observation of the soap business when you were connected with the Western roads?

Mr. LEEDS: No more than I would have with reference to other article that I had to deal with.

Mr. MAXWELL: Do you know anything about the conditions connected with the manufacture of soap?

Mr. LEEDS: In what respect?

Mr. MAXWELL: With respect to the profits?

2697 Mr. LEEDS: I don't know anything about the profits. I never stopped to inquire about a man's profits when I made a rate.

Mr. MAXWELL: You didn't. You didn't consider that a matter of any consequence whatever?

Mr. LEEDS: I suppose it would be a matter of consequence if a man was losing money and would have to go out of business, but so far as his profits were concerned you would not inquire any more about that then you would about the railroad's earning dividends.

Mr. MAXWELL: Would you inquire about dividends in order to determine what rate should be established?

Mr. LEEDS: If you did, you would run up against a complicated proposition I expect.

Mr. MAXWELL: Don't the earnings have anything to do with the fixed charges of a railroad?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Would you not inquire what the profits were of a railroad in classifying?

Mr. LEEDS: I suppose it would depend on where you stood, whether you would or would not. If you were connected with a railroad, you would undertake to make as good earnings as possible; that is part of the business.

2698 Mr. MAXWELL: Having that fact in view, what would you charge for soap, either in rate or classification? How would you fix the rate or classification for soap?

Mr. LEEDS: The general proposition of classification is not as technical or as complicated as we are led to suppose. If an article

is especially good or especially bad, some particular attention would be paid to that in its classification.

Mr. MAXWELL: Well, if it was not specially good or specially bad, how would you fix its classification or its rate?

Mr. LEEDS: Make some inquiry as to its general character, as to the amount of its tonnage and distribution, and try to fix a classification that would meet its requirements?

Mr. MAXWELL: What requirements?

Mr. LEEDS: As to distribution and to secure the best results I could in the movement of the business.

Mr. MAXWELL: Best results for whom?

Mr. LEEDS: For the company I represented.

Mr. MAXWELL: For the railroad?

Mr. LEEDS: Yes, sir; that is what I did in classification.

Mr. MAXWELL: Was that the only thing you took into view in what you did in the matter of classification and rates?

Mr. LEEDS: I do not know what you refer to more. I
2699 would pay attention to how well it would load; how easily it would handle, how conveniently it would handle. There are a hundred things that you would consider perhaps in making a classification which you could not mention or define perhaps.

Mr. MAXWELL: You have given us three. Now I would like to have some of the other hundred considerations.

Mr. LEEDS: I have given you more than three; at least I believe I have.

Mr. MAXWELL: I understood you to say that you would do the best you could for the railroad; that you would consider the ease of handling and the amount of tonnage. Now, what else?

Mr. LEEDS: It would be as well to have the stenographer read how many things I have mentioned.

Mr. MAXWELL: I have named those three. I do not recollect any others. I wish you would kindly tell us what they are.

Mr. LEEDS: I think I mentioned to you before that you would consider how well it would load with respect to its tonnage; that is, how much it would load per car; its density in other words. Its value would cut some figure, and its competition something besides.

Mr. MAXWELL: Why would its competition cut any figure?

Mr. LEEDS: Because you would want to make as wide a dis-
2700 tribution of it as practicable, and you would want to meet as far as you could competition, particularly if that competition did not pay a revenue.

Mr. MAXWEL.: Revenue to whom?

Mr. LEEDS: To the railroad you were representing.

Mr. MAXWELL: Don't you think that the profit to the manufacturer would have anything to do with the competition?

Mr. LEEDS: You mean the profits to the manufacturer would have anything to do with the competition?

Mr. MAXWELL: Yes.

Mr. LEEDS: Not so far as the railroads were concerned; no.

Mr. MAXWELL: So far as the manufacturer was concerned, to the soap business?

Mr. LEEDS: That is a question he regulates himself.

Mr. MAXWELL: How?

Mr. LEEDS: He makes as much profit on his business as he can, don't he?

Mr. MAXWELL: I suppose so. Then in your consideration of the proper place for soap in the Official Classification you have given no attention whatever to the profits of the soap business?

Mr. LEEDS: Why, no, I have not.

2701 Mr. MAXWELL: You don't know what they are?

Mr. LEEDS: No, sir, I do not.

Mr. MAXWELL: You do not know whether the business is profitable or successful in Central Territory or not?

Mr. LEEDS: I presume there is some profit in it, or they would not continue in it.

Mr. MAXWELL: But you do not know; you are simply presuming?

Mr. LEEDS: I have not seen their books.

Mr. MAXWELL: It is not necessary to see the books in order to know whether the business is profitable or successful.

Mr. LEEDS: I suppose a man can make up his mind from general appearances of prosperity that anybody is prosperous. Is that what you mean?

Mr. MAXWELL: You do not know anything about the success or prosperity of the soap business in Central Traffic Territory?

Mr. LEEDS: I do not know that I care. It is not a matter that I would consider very much in making a classification.

Mr. MAXWELL: Would you consider it at all?

Mr. LEEDS: I might consider it with reference to making reductions, but not with reference to making legitimate classification.

Mr. MAXWELL: Why?

2702 Mr. LEEDS: If a man came to me and said that he would have to go out of business or have a lower rate, I would try to find out whether he was telling the truth.

Mr. MAXWELL: If you found he would have to go out of business, you would make a lower rate?

Mr. LEEDS: If I wanted his business; yes.

Mr. MAXWELL: If the railroads had to go out of business unless they got a higher rate and you were confronted with the necessity of increasing rates, would you consider the success of the business in the articles you were aiming to affect?

Mr. LEEDS: I would by all means.

Mr. MAXWELL: You would?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Do you know why the classification was changed in the Official Classification No. 20 by the transfer of many articles from the sixth to the fifth class?

Mr. LEEDS: I have heard it stated that it was to secure more revenue. What were the necessities for that revenue I have never learned.

Mr. MAXWELL: If you were confronted with that necessity—we will presume there was a necessity—how would you go about making a classification resulting in the raising of rates?

703 Mr. LEEDS: If I were going about it, I would try to be consistent as near as I could be. I would not be liberal to one
oposition and hard on another.
Mr. MAXWELL: Suppose you found that the profits of the soap
siness were large?
Mr. LEEDS: How should I know?
Mr. MAXWELL: I ask you suppose you found that to be the fact.
nswer that and then I will suggest how you could know. Suppose
u found that to be the fact?
Mr. LEEDS: Well, suppose I did.
Mr. MAXWELL: Would that have any influence, and if so, what
n any action you would take in determining to get increased rev-
nue that the rates on soap should be raised?
Mr. LEEDS: It would not cause me to discriminate between that
nd other articles. I do not think it would.
Mr. MAXWELL: Suppose you found some other article where the
rofit was little and the margin very low?
Mr. LEEDS: Well, I do not think I would discriminate then un-
ss I felt it was absolutely a case of necessity.
Mr. MAXWELL: Necessity for what?
Mr. LEEDS: For reduction.
Mr. MAXWELL: We are talking about an increase—not about a reduction.
704 Mr. LEEDS: Whether I would make it if the profits were very low? Is that what you want to know?
Mr. MAXWELL: No, I have asked you if you were confronted with
he necessity of having increased revenue on account of increasing
xpenses of operating and you had to find the articles upon which
ou would get that increased revenue and you came to the article of
oap and you found that the profits on that business were large and
hat the business had been extraordinarily successful and prosperous,
want to know how you would deal with the article of soap?
Mr. LEEDS: I do not know that it has ever been successful for
ailroads to go into partnership with dealers along its line. My
xperience, so far as I have observed, would point to that being a
ad policy. I would not undertake to go into partnership in that
ay.
Mr. MAXWELL: Then in increasing rates in order to meet the
ecessities for increased revenue would be going into partnership?
Mr. LEEDS: I said I would not discriminate against an article—
nd discrimination against an article would be implied from going
into partnership with a man if he thought his business was pros-
perous enough to stand it.
2705 Mr. MAXWELL: Then where would you get your increase of rates?
Mr. LEEDS: I would make it as far as I could a consistent classification and adjust my rates and my figures.
Mr. MAXWELL: Well, I understand that you would make a consistent one, but how would you go about it?
Mr. LEEDS: Advance the tariff if I could to get the revenue.
Mr. MAXWELL: Suppose you could not do that?

Mr. LEEDS: Then I would have to submit to the inevitable.

Mr. MAXWELL: When you were advancing the tariff what principle would you go on?

Mr. LEEDS: I would undertake to make the advances as equitable and even as practicable.

Mr. MAXWELL: Now, will you tell us what there was that was inequitable in this change that was made in Official Classification No. 20?

Mr. LEEDS: I stated in my testimony that I thought it was inequitable to change the relations between the dealers in a competitive commodity, a very strongly competitive article, by a change in classification; that could be avoided by changing the tariff and the rate even if you advanced all parties alike.

2706 Mr. MAXWELL: What would be the difference between advancing the rate or tariff and advancing the classification where it was done to all parties alike?

Mr. LEEDS: If you advance the classification, there is a wider range between long distance tariffs as between the higher and lower classes than there is on shorter distances; as a general proposition I think that will hold good in the adjustment of the tariff.

Mr. MAXWELL: Is that the full criticism you have—as to advancing rates and advancing classification?

Mr. LEEDS: No, I think with respect to handling the business of a manufacturer or dealer in one commodity, for example, changing your classification and the application of your Rule 10 works a hardship. It puts the manufacturer, if you please, in the power of what we may term the jobber to a large extent. He has not got as much independence of action as he would have if all shippers were subjected to the same rule; that is, if the application would be the same to all shippers.

Mr. MAXWELL: Do you know to what extent Procter & Gamble Co., for instance, ship in carload lots?

Mr. LEEDS: No.

2707 Mr. MAXWELL: You don't?

Mr. LEEDS: No, sir; I have not applied this rule that I am talking about to the business of Procter & Gamble. I don't consider it necessary.

Mr. MAXWELL: Then you have been dealing with a theoretical, abstract condition and not with the actual condition, have you?

Mr. LEEDS: You can apply it if you please to anybody's business or any amount of business and you will find it works out in practice as I have told you.

Mr. MAXWELL: Don't it make some difference to Procter & Gamble whether their shipments are largely in carload lots or slightly in carload lots?

Mr. LEEDS: I will mention two cases of discrimination. The wider difference between the long haul and the short haul tariff between the classes and the application of your 20 per cent. reduction below third class does not maintain the same difference which existed in less than carload shipments prior to the change in your classification.

Mr. MAXWELL: Won't you please answer my question, which is whether the application of Rule 10, to which you have referred, so far as it relates to Procter & Gamble does not depend upon the extent to which Procter & Gamble ship carload lots?

2708 Mr. LEEDS: No, and I will tell you the reason why, a better reason yet. The men who ship their business in mixed carloads get the advantage under the present classification of fifth class. If they cannot ship in mixed carloads, they must pay a rate of 20 per cent. less than third class.

Mr. MAXWELL: Suppose their business is practically all carloads?

Mr. LEEDS: Then the other rule will apply to it.

Mr. MAXWELL: What other rule?

Mr. LEEDS: That I mentioned just prior to the last one.

Mr. MAXWELL: Does Rule 10 apply to it?

Mr. LEEDS: It affects it all.

Mr. MAXWELL: How does Rule 10 affect the shipper or manufacturer whose business is carload business?

Mr. LEEDS: Rule 10 does not admit of the shipper of one article shipping an aggregation of less than carload shipments at the fifth class, or the carload class rate.

Mr. MAXWELL: How does that concern the shipper if his shipments are all in carload lots?

Mr. LEEDS: If the shipments are all by carload lots? But they are not all by carload lots.

2709 Mr. MAXWELL: Please answer my question. How does that affect a shipper whose shipments are all by carload lots?

Mr. LEEDS: They cannot all be by carloads so long as Rule 10 exists.

Commissioner FIFER: But suppose they are?

Mr. LEEDS: If they are, no; but the proposition is impracticable.

Mr. MAXWELL: Suppose a man does not ship all in carload lots and the persons who get the benefit of Rule 10 are in the lines of trade which are not in competition with his business or related to it in any way: how does it concern him practically, in dollars and cents, that other persons in a different business who do not compete with him at all are enabled to make up combination lots?

Mr. LEEDS: It would not affect a man in a different business except so far as the consistency of classification applied to the reverse of that.

Mr. MAXWELL: I am talking about practical business, dollars and cents, and I do not know what you mean by "consistency of classification." If you have any meaning of consistency which affects practical business in dollars and cents, I would like to know what it is.

2710 Mr. LEEDS: Apply it to your classification and see.

Mr. MAXWELL: That is what I am asking you to do. You are an expert. Was Rule 10 in force in the Western Classification?

Mr. LEEDS: It never was, and I believe it is not yet—no, they do in certain things, I believe; I am not able to name. They do admit of some mixed carload business; I think packing-house products to some extent are shipped in mixed carloads. But so far as

the general application of that rule to the Western Classification is concerned, no.

Mr. MAXWELL: Do they allow a manufacturer who has various consignments to the same place to consolidate them in a car and get carload rates?

Mr. LEEDS: Not if they know it.

Mr. MAXWELL: Do you know what the practice is in Central Territory under Official Classification No. 20 with reference to that?

Mr. LEEDS: I know what the rule is. That is what I am talking about.

Mr. MAXWELL: You mean you know Rule 10 as you see it printed?

Mr. LEEDS: I would if I should see it, I believe.

Mr. MAXWELL: Will you tell us whether in Central Territory Procter & Gamble or any other shipper of soap having many
2711 consignments to different customers to different places get the benefit of carload lots?

Mr. LEEDS: I do not know whether they do or not; no, it would be contrary to the rule of the classification if they did.

Mr. MAXWELL: Now, I want to take up this statement that you have made here, illustrating what different dealers could do in making up carload lots of things. You made a list under different heads of different things which you imagine a particular dealer could combine in carload lots—Exhibit "I." Do you know what the actual practice is in Central Traffic Territory?

Mr. LEEDS: No, sir; I only know what you propose to do.

Mr. MAXWELL: You have imagined a case?

Mr. LEEDS: No; I have not imagined any case at all. There is the rule and that is what you can do.

Mr. MAXWELL: Do you know whether anybody does that?

Mr. LEEDS: No, sir; but I know you propose to do that. You didn't establish that rule in your classification for fun.

Mr. MAXWELL: But you do not know as a matter of fact that this is done at all, or, if so, to what extent?

Mr. LEEDS: No, sir; I never inquired whether it was done; I have analyzed the classification with respect to Rule 10.

2712 Mr. MAXWELL: That is purely an illustration and theory, without any knowledge whatever as to whether it is practical, and, if practical, to what extent.

Mr. LEEDS: No, it is not purely theory; it is not theory. I draw the inference that you publish your rule and classification for some purpose, and if that purpose is not carried out you would not continue to publish the classification in that way.

Mr. MAXWELL: Let us take agricultural implements, for instance. You have furnished a list here of a whole lot of articles that somebody could get a carload out of. Do you know whether a carload was ever made by a dealer in agricultural implements of those articles or any of them in Central Traffic Territory.

Mr. LEEDS: I do not know anything about the practice of shippers as to the use of your Rule 10.

Mr. MAXWELL: You have made even a more lengthy list of articles

which you say it would be possible for a woodenware dealer to combine in a carload lot. Do you know whether a woodenware dealer in Central Traffic Territory ever did make a carload lot out of those articles, or any of them?

2713 Mr. LEEDS: You can apply the same answer to that as to agricultural implements.

Mr. MAXWELL: Then your answer is that you do not know of a case?

Mr. LEEDS: I do not know of a case.

Mr. MAXWELL: And you make the same answer to every possible case you have stated in this Exhibit referred to?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: You have alone made among the statements with respect to commodity rates a list of articles that are carried at commodity rates. From what source did you get your information about that?

Mr. LEEDS: From the tariffs of the roads embraced within the limits of the application of that classification.

Mr. MAXWELL: Then you have made these statements from an examination of the tariff sheets of different roads?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Did you do that personally?

Mr. LEEDS: Most of it—I did either myself or it was under my direction.

Mr. MAXWELL: Who did it under your direction?

Mr. LEEDS: Mr. Macdonald and I did it together.

2714 Mr. MAXWELL: How long have you and Mr. Macdonald been working on these various statements?

Mr. LEEDS: About a month.

Mr. MAXWELL: When did you commence?

Mr. LEEDS: I do not recall the exact date, but it was more than a month ago; I have not worked continuously on it.

Mr. MAXWELL: How did you come to be making these statements with Mr. Macdonald?

Mr. LEEDS: I was employed to do so.

Mr. MAXWELL: By whom were you introduced to Mr. Macdonald and how?

Mr. LEEDS: I met Mr. Macdonald.

Mr. MAXWELL: Just casually on the street?

Mr. LEEDS: Mr. Macdonald came to me.

Mr. MAXWELL: Was he introduced by anybody?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Were you introduced to him by anybody?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Has anybody else been working with you on these statements?

Mr. LEEDS: Mr. Wilson has done some work on them.

Mr. MAXWELL: What Mr. Wilson?

2715 Mr. LEEDS: This is the gentlemen in this room.

Mr. MAXWELL: E. P. Wilson?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Was it Mr. Wilson who introduced you to Mr. Macdonald or Mr. Macdonald to you?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know how it was that Mr. Macdonald came to go to you?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Did he explain why he came to you?

Mr. LEEDS: I did not ask him.

Mr. MAXWELL: Did he make any statement to you as to why he came to you?

Mr. LEEDS: I think he said that he knew I had been in the railroad service and that I was probably unemployed at the present time and could do this work.

Mr. MAXWELL: You had not known him before?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Did he say how he came to know that?

Mr. LEEDS: I believe not; I don't recall that he did.

Mr. MAXWELL: Now, coming back to these statements that you made about commodity rates: You know that the Classi-
2716 fication Committee has nothing to do with commodity rates?

Mr. LEEDS: I do not know that that cuts any figure.

Mr. MAXWELL: It is not for you to determine what cuts any figure. You are employed as an expert but not as a judge in this case. Will you please answer my question.

Mr. LEEDS: The natural inference would be that the railroads themselves handle the commodity exceptions to the classification.

Mr. MAXWELL: Each railroad you mean?

Mr. LEEDS: Yes, sir; I should think so; that would be my way of doing it.

Mr. MAXWELL: Do you know that is the fact with reference to Central territory?

Mr. LEEDS: It is generally a fact, and I can state it sufficiently to be positive that it is the rule.

Mr. MAXWELL: Now, when you say that an article has a commodity rate you mean by that that one or more railroads give it a commodity rate, don't you?

Mr. LEEDS: Yes, sir; I mean something more than that. I mean this: that *that* a railroad which acquiesces in or approves this classi-
fication has a traffic that requires and makes an exception
2717 to the classification, or thinks it requires it and makes an exception to the classification and makes a rate. He does that because where this commodity rate applies there is some of that traffic to move; and where the commodity rate does not apply in all probability the movement is insignificant. That would be my diagnosis of the case.

Mr. MAXWELL: Exhibit "A" is a statement of articles in the sixth class taking commodity rates. To what extent did you participate in the preparation of this statement?

Mr. LEEDS: I believe I examined the special rates and asked that they be drawn off into a table—a tabulated statement like that.

That is, I examined the special tariffs and directed that they be taken off.

Mr. MAXWELL: Did you put the articles down or tell somebody else to do so?

Mr. LEEDS: I think I told somebody else; I do not think I took them off myself.

Mr. MAXWELL: You mean that you told Mr. Macdonald to make up a statement of articles having a commodity rate?

Mr. LEEDS: I examined the tariff itself.

Mr. MAXWELL: Did you verify it?

Mr. LEEDS: Yes, sir.

2718 Mr. MAXWELL: Personally?

Mr. LEEDS: That has been verified before it came here.

Mr. MAXWELL: I am asking whether you did it.

Mr. LEEDS: I verified it here; yes, sir.

Mr. MAXWELL: Then, any article which was found to have a commodity rate on the tariff issued by any railroad in Central Territory you entered on this list, did you?

Mr. LEEDS: No, sir; I did not myself. I directed that it be done; it was done under my direction.

Mr. MAXWELL: So this is a list of articles which are found to have a commodity rate on the tariff sheet of any railroad in Central Territory?

Mr. LEEDS: No, sir; not necessarily any road—perhaps I misunderstood your question. Do you mean all roads, or some one?

Mr. MAXWELL: Some one road.

Mr. LEEDS: Oh, yes. I do not know that I would say Central Territory, no.

Mr. MAXWELL: In what territory?

Mr. LEEDS: It may be in Trunk Line or Central Territory either.

Mr. MAXWELL: Take bleach, for instance. What roads give that a commodity rate?

Mr. LEEDS: Why, I think that is applicable on any of the

2719 roads between any of the percentage points and New York. I think that rate is good anywhere, in Trunk Line or Central Territory. I am not positive, but I think it is.

Mr. MAXWELL: Both ways?

Mr. LEEDS: No, not necessarily both ways, but it is good from its point of origin, which I suppose is New York.

Mr. MAXWELL: West?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: It is not good east then?

Mr. LEEDS: I do not think so. I do not think the rate reads "between."

Mr. MAXWELL: Is it good locally—the commodity rate on bleach?

Mr. LEEDS: I do not know as to that. It applies between the percentage points and terminals.

Mr. MAXWELL: Would it apply, for instance, between New York and Rochester?

Mr. LEEDS: No, I do not think so; points west of Pittsburg only are percentage points, I believe.

Mr. MAXWELL: Take starch: On what roads does that have a commodity rate?

Mr. LEEDS: I believe that is good anywhere.

2720 Mr. MAXWELL: Eastbound and westbound?

Mr. LEEDS: Yes, sir; and not only everywhere, but it is good locally, too, I think.

Mr. MAXWELL: Good locally?

Mr. LEEDS: I think it is. I believe the same application is made to that as applied to cereal products. That is what makes me make that statement.

Mr. MAXWELL: Won't you please give me the tariff sheet on which you base that statement?

Mr. LEEDS: I haven't it here.

Mr. MAXWELL: Can you get it?

Mr. LEEDS: I believe it can be produced. Mr. Macdonald, can it be produced?

Mr. MACDONALD: It would take many to show it all.

Mr. MAXWELL: We want one. That will go a long way toward showing it. I wish you would get your tariff sheets to show that.

Mr. WARRINGTON: We got a good deal of that information from your statistical department, Judge Fifer.

Mr. LEEDS: I think it applies as a rate on cereal products.

Mr. MAXWELL: You don't know whether it is in both directions and locally on starch?

Mr. LEEDS: No, sir.

2721 Mr. MAXWELL: Whether it applies locally you don't know?

Mr. LEEDS: My impression is that it applies as the cereal product rate applies. If so, it applies in both directions or locally, anywhere.

Mr. MAXWELL: If it is so, it is so, but I want to find out from you whether you testify that starch has a commodity rate both ways and locally?

Mr. LEEDS: I will simply say that starch has a commodity rate.

Mr. MAXWELL: But whether it is both ways and locally——

Mr. LEEDS: I won't say. That will settle that part of it.

Mr. MAXWELL: Let me take hoop poles. Between what points and in what directions does that have a commodity rate?

Mr. LEEDS: I do not recall that. It has a commodity rate, but I do not recall the points.

Mr. MAXWELL: You do not know whether in both directions or not?

Mr. LEEDS: Probably in one direction.

Mr. MAXWELL: But you do not know?

Mr. LEEDS: I do not recall where it applies.

Mr. MAXWELL: Take fence poles. Can you tell us whether that has a commodity rate in both directions and locally?

Mr. LEEDS: I know it has a commodity rate.

2722 Mr. MAXWELL: But you don't know whether it is in both directions or between what points?

Mr. LEEDS: No.

Mr. MAXWELL: Take poles. Can you tell us whether they have a commodity rate in both directions and between what points and whether locally or not?

Mr. LEEDS: The same answer as to the other.

Mr. MAXWELL: In other words, you don't know?

Mr. LEEDS: I didn't say I did not know. I know there is a commodity rate, but its application I do not remember.

Mr. MAXWELL: That is, you can't tell us from or to what points, can you?

Mr. LEEDS: I can tell you to-morrow.

Mr. MAXWELL: You cannot tell us now?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Or whether it applies locally?

Mr. LEEDS: So far as that is concerned, I can tell you about all those as to their application, but cannot do it now.

Mr. MAXWELL: This statement was not intended to indicate that these commodity rates were of general application, was it?

Mr. LEEDS: I would not consider it so; no sir.

Mr. MAXWELL: I want to get correctly what you mean to testify to, Mr. Leeds; that is all, and what I am asking you is
2723 whether you intended by this statement, Exhibit "A," to say that the commodity rates on these articles in Exhibit "A" are of general application?

Mr. LEEDS: I will tell you exactly what I intend to say about that, and it is this: That there are, in the first place, commodity rates on the articles named in that list; secondly, that if there were no commodities to move, it is not likely that there would be a commodity rate and that your roads do apply exceptions to that classification when they consider it necessary, where there is traffic to move.

Mr. WARRINGTON: And they are able to do it at the prices set against those commodity articles?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Now, will you please answer my question?

Mr. LEEDS: I would like to have the question read.

The question was repeated by the stenographer.

Mr. LEEDS: The only part of that I have not answered is as to their general application, and I will say that they are not of general application.

Mr. MAXWELL: Now, Mr. Leeds, do you know as to this article of poles, for instance? Do you know between what points there is a commodity rate on poles?

2724 Mr. LEEDS: No, sir; I have not the data before me from which to answer those questions as to those articles. My answer would be the same I presume with respect to the most of them.

Mr. MAXWELL: Do you know what commercial conditions may have brought about a commodity rate on poles wherever that prevails?

Mr. LEEDS: No, I presume it was legitimate;—that the rate was made legitimately.

Mr. MAXWELL: And by legitimate you mean you suppose that the railroad found it necessary to do it in order to get the business?

Mr. LEEDS: Certainly.

Mr. MAXWELL: Is that generally what brings about these commodity rates?

Mr. LEEDS: I suppose, yes, to a large extent.

Mr. MAXWELL: Commercial conditions and necessities, is it not?

Mr. LEEDS: Commercial conditions are supposed to control in the making of those rates.

Mr. MAXWELL: In other words, there is some commercial condition that requires that between certain points, or in a certain direction there should be on some particular article an exception which is known as a commodity rate? Is that not so?

2725 Mr. LEEDS: I do not think you can narrow the proposition down to that quite. It is conceived to be a commercial necessity, no doubt, to make those rates, from some cause or other, but as to many of those articles the application of the rate is pretty general, so that it not only embraces commodities between two points, but it embraces perhaps all of that commodity that may be moved in the limits of the territory.

Mr. MAXWELL: But whatever the extent of the commodity is, the rate is brought about by commercial conditions?

Mr. LEEDS: It may be.

Mr. MAXWELL: Is that not so generally—that it is some commercial conditions peculiar to that article or situation and section of the country?

Mr. LEEDS: Not necessarily.

Mr. MAXWELL: I say generally—not necessarily.

Mr. LEEDS: No; I will tell you what exceptions there are.

Mr. MAXWELL: I have not asked you about exceptions. I have in the most explicit way said "generally." I want you to answer my question first.

Mr. LEEDS: In order to answer your question intelligently, I will have to answer no.

Mr. MAXWELL: Then what does generally bring about these commodity rates?

2726 Mr. LEEDS: That applies I believe largely or wholly in the sixth class.

Mr. MAXWELL: Exhibit "A" does?

Mr. LEEDS: Yes, sir. There is a pretty long list of articles in the sixth class that probably never take the sixth class rate. It is the lowest class in the classification; it is the dumping ground for articles not otherwise provided for in the classification.

Mr. MAXWELL: That is, sixth class is?

Mr. LEEDS: Yes, sir; and after you have made your classification you take care of a good many of those articles that you conceive to be necessary by commodity exceptions on the various roads.

Mr. MAXWELL: Conceived to be necessary for what reasons?

Mr. LEEDS: According to the judgment of the men.

Mr. MAXWELL: How does that judgment affect it? Why do they have a judgment which makes it necessary to make a commodity rate—that commercial conditions require a lower rate?

Mr. LEEDS: That is the way they are generally arrived at.

Mr. MAXWELL: Does water competition have any effect?

Mr. LEEDS: Yes, sir; I think water competition is largely taken care of in that way.

2727 Mr. MAXWELL: Now, as to what the commercial conditions were which caused commodity rates to be given in Central Traffic Territory to any of these articles, you don't know, do you, and if you do know please state what they were with respect to any article on this list.

Mr. LEEDS: I can tell you with reference to some of the articles, which are so cheap that they would not stand the sixth class rate anywhere. Take the article of brick, sand or stone: They are seldom carried at class rates on any road.

Mr. MAXWELL: Then you know that the reason that brick, sand and stone are given a commodity rate in Central Traffic Territory is that the articles are so cheap that they could not bear a high rate?

Mr. LEEDS: I think I can say that that is my experience—that those articles are never carried at class tariff rates.

Mr. MAXWELL: Your experience has been wholly in other territory?

Mr. LEEDS: Well, they are cheap here.

Mr. MAXWELL: Can you tell us the commercial conditions which in Central Traffic territory have caused barley to have a commodity rate?

2728 Mr. LEEDS: Barley is one of the grains. Grain is usually carried at a commodity rate; it is almost always carried at a commodity rate. The movement of your grains in all probability is largely influenced by water competition.

Mr. MAXWELL: Then you suppose that it is water competition which causes barley to be given a commodity rate in Central Territory?

Mr. LEEDS: So far as the local rate is concerned it might not be so—no.

Mr. MAXWELL: Do you know whether barley has a commodity rate locally?

Mr. LEEDS: I don't know that it has locally. I presume that it applies as the cereal rate applies. I believe it does.

Mr. MAXWELL: You must excuse me. I do not want what you presume or what you believe. Do you know?

Mr. LEEDS: So far as the local rate is concerned, no, without the data from which I made that up.

Mr. MAXWELL: You do not know at this moment? You have not known any time whether barley had a local commodity rate or not? Have you?

Mr. LEEDS: I might have known at some time about it.

2729 Mr. MAXWELL: If you knew, you have forgotten it?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Take barytes, for instance. Do you know what conditions or circumstances have caused barytes to get a commodity rate in Central Traffic Territory?

Mr. LEEDS: I do not know a thing about it.

Mr. MAXWELL: Take Salt cake. Do you know what conditions or

circumstances have caused it to have a commodity rate in Central Traffic Territory?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Zinc ashes?

Mr. LEEDS: No.

Mr. MAXWELL: Bran?

Mr. LEEDS: No.

Mr. MAXWELL: Coal facings?

Mr. LEEDS: No.

Mr. MAXWELL: Pop corn?

Mr. LEEDS: No.

Mr. MAXWELL: Cracked wheat?

Mr. LEEDS: No.

Mr. MAXWELL: Dross zinc?

Mr. LEEDS: No.

2730 Mr. MAXWELL: Feldspar?

Mr. LEEDS: No.

Mr. MAXWELL: Fertilizer?

Mr. LEEDS: No.

Mr. MAXWELL: Earthen flues?

Mr. LEEDS: No.

Mr. MAXWELL: Grits?

Mr. LEEDS: No.

Mr. MAXWELL: Gypsum?

Mr. LEEDS: No.

Mr. MAXWELL: Muck or puddle bars?

Mr. LEEDS: No.

Mr. MAXWELL: Jellico or shale?

Mr. LEEDS: I presume the same rule would apply to that as to sand and stone—a very cheap commodity.

Mr. MAXWELL: Iron ore?

Mr. LEEDS: No.

Mr MAXWELL: Pig iron?

Mr. LEEDS: No.

Mr. MAXWELL: Rails, old or new?

Mr. LEEDS: No. You can take the whole list and ask the question. I have not the data here.

2731 Mr. MAXWELL: You do not know what conditions may have led to any of these articles having commodity rates?

Mr. LEEDS: I don't know the conditions now as to these commodity rates.

Mr. MAXWELL: And without me taking time to go over this list, you say you make that answer to the whole list?

Mr. LEEDS: With exceptions taken out of that list that we have had something more to say about. I have made some exceptions to that.

Mr. MAXWELL: You say you had data. What data can you get that will enable you to state what conditions led to giving commodity rates to any of those articles?

Mr. LEEDS: I could not answer that question; I could not tell you what led to giving a commodity rate; I did not make it, neither did I take part in the discussion or the making of the rate.

Mr. MAXWELL: But there are not any data that you can get?

Mr. LEEDS: I can only give you the data that those special rates were made.

Mr. MAXWELL: Why they were made you don't know?

Mr. LEEDS: I don't know why they were made.

Mr. MAXWELL: You could not get any data which would

2732 enable you to answer that question, why they were made?

Mr. LEEDS: Oh, no, if that is what you are driving at.

Mr. MAXWELL: Take starch, for instance, do you know the conditions which led to the making of a commodity rate on starch? You will excuse me if I again ask for your knowledge and not for conjectures.

Mr. LEEDS: I suppose that the testimony in this case would be knowledge, would it not?

Mr. MAXWELL: No, sir. We don't want your deductions from the testimony. We want your knowledge. We don't want you to tell us what somebody else has said in testimony.

Mr. LEEDS: All I know about it so far as the reasons you assign for making that special rate is what was stated in your testimony. The only thing I found was that it partially went for export.

Mr. MAXWELL: You got that from the testimony, did you?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: But of your own knowledge you know nothing about it?

Mr. LEEDS: I know there is some starch exported.

Mr. MAXWELL: Do you know from your own knowledge what the commercial conditions were that brought about the commodity rate on starch?

2733 Mr. LEEDS: I do not really believe that there were any good reasons for doing it.

Mr. MAXWELL: Whether the reasons were good or bad, I ask you if you know what the reasons were.

Mr. LEEDS: I don't know why some other man did something that I do not think I would do myself.

Mr. MAXWELL: You do not know what the commercial conditions were which brought about a commodity rate on starch?

Mr. LEEDS: I do not believe there was any necessity for it.

Mr. MAXWELL: Mr. Leeds, that is not my question. I have asked you whether or not you know of your own knowledge.

Mr. LEEDS: Why, no; I don't know what the man had in his mind when he made the commodity rate.

Mr. MAXWELL: I cannot finish the cross-examination for some time, and suggest that we take an adjournment.

Commissioner FIFER: Very well. We will adjourn until 10 o'clock to-morrow morning.

Adjourned at 5:30 p. m.

2734 CINCINNATI, OHIO, *Sept.* 28, 1900—10 a. m.

Commissioner FIFER: Gentlemen, you may proceed.

Mr. MAXWELL: Mr. Leeds: What territory was covered by the Western Classification?

Mr. LEEDS: The territory west of the Mississippi River in the United States I believe will pretty fairly describe it.

Mr. MAXWELL: To the Pacific Coast?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: What is the tonnage of soap in Central Territory?

Mr. LEEDS: I do not know.

Mr. MAXWELL: What was it in 1899?

Mr. LEEDS: I do not know what it was at any time.

Mr. MAXWELL: Can you give us any approximate statement of it?

Mr. LEEDS: No, sir; I do not know.

Mr. MAXWELL: Do you know whether it has increased or diminished since January 1st, 1900, and, if so, to what extent?

Mr. LEEDS: Only so far as I have heard it has decreased.

Mr. MAXWELL: We don't want to know what you have heard.

2735 Mr. LEEDS: Well, I don't know.

Mr. WARRINGTON: He could not know it except by hearing it.

Mr. MAXWELL: Do you know whether the price of soap has been increased or decreased since January 1st, 1900?

Mr. LEEDS: I have no means of knowing.

Mr. MAXWELL: Do you know whether the manufacturers of soap other than Procter & Gamble have increased or decreased their prices since January 1st, 1900?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know whether the Procter & Gamble Company has declined any business since January 1st, 1900?

Mr. LEEDS: I have no means of knowing that.

Mr. MAXWELL: Do you know whether any other manufacturer of soap has declined any business since January 1st, 1900?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know whether the Procter & Gamble Co. since January 1st, 1900, have restricted their efforts to sell soap?

Mr. LEEDS: I do not.

Mr. MAXWELL: Do you know whether any other manufacturer of soap, since January 1st, 1900, has restricted his efforts to sell soap?

2736 Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know over what territory the Procter & Gamble Co. sold soap in 1899?

Mr. LEEDS: No, sir; I do not.

Mr. MAXWELL: Do you know what territory any other manufacturer sold soap in 1899; if so, what territory?

Mr. LEEDS: I do not.

Mr. MAXWELL: Do you know over what territory the Procter & Gamble Company have sold soap since January 1st, 1900?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Or to what extent?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know as to any other manufacturer of soap?

Mr. LEEDS: No, sir.

Mr. MAXWELL: What is the tonnage of rice in Central Territory?
Mr. LEEDS: I cannot answer the question.
Mr. MAXWELL: Do you know what it was in 1899?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Do you know approximately?
Mr. LEEDS: No, sir.
2737 Mr. MAXWELL: What is the tonnage of starch?
Mr. LEEDS: I don't know.
Mr. MAXWELL: Do you know in Central Territory what it is?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Or in any other part of the United States?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Do you know what it was in 1899?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Approximately?
Mr. LEEDS: No, sir.
Mr. MAXWELL: What is the tonnage of sugar?
Mr. LEEDS: I don't know.
Mr. MAXWELL: Can you tell us approximately?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Can you tell us for Central Territory?
Mr. LEEDS: No.
Mr MAXWELL: Can you tell us what it was in 1899?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Either for Central Territory or the country generally?
Mr. LEEDS: No.
2738 Mr. MAXWELL: What is the tonnage of coffee?
Mr. LEEDS: I make the same answer throughout as before.
Mr. MAXWELL: Can you answer the same questions with respect to flour?
Mr. LEEDS: I make the same answer.
Mr. MAXWELL: Then you don't know?
Mr. LEEDS: I said the same answer.
Mr. MAXWELL: Can you answer the same questions with respect to alum?
Mr. LEEDS: The same answer.
Mr. MAXWELL: How about sulphate of alumina?
Mr. LEEDS: The same answer.
Mr. MAXWELL: How about bone black?
Mr. LEEDS: The same answer.
Mr. MAXWELL: How about salt?
Mr. LEEDS: The same answer.
Mr. MAXWELL: How about zinc?
Mr. LEEDS: The same.
Mr. MAXWELL: How about zinc sheet?
Mr. LEEDS: The same.
Mr. MAXWELL: Can you give us any idea of the tonnage of alum?
2739 Mr. LEEDS: I cannot answer that question. I believe I answered that once.
Mr. MAXWELL: You mean you cannot tell us?

Mr. LEEDS: The same answer as to the others.

Mr. MAXWELL: Do you know between what points alum is shipped?

Mr. LEEDS: No.

Mr. MAXWELL: What is the value of alum?

Mr. LEEDS: It is a cheap commodity, worth three or four cents per pound.

Mr. MAXWELL: How is it packed?

Mr. LEEDS: Usually in barrels or boxes.

Mr. MAXWELL: Is it in barrels or boxes, or both?

Mr. LEEDS: Either.

Mr. MAXWELL: If it is packed in barrels, is it more easily or more difficultly handled than if packed in boxes?

Mr. LEEDS: Well, it would not pack as close in barrels in the car as it it were in boxes. There would be a space between the barrels in the car which would not occur in the case of square boxes of uniform size.

Mr. MAXWELL: How about the handling?

Mr. LEEDS: I should not think so far as the handling of it is concerned that there would be very much difference. The
2740 boxes would be handled on a truck and the barrels rolled.

Mr. MAXWELL: Is there any difference in the facility of handling, whether an article is rolled in barrels or handled on a truck in boxes?

Mr. LEEDS: I should not think the difference would be very appreciable in the cost of labor.

Mr. MAXWELL: Is there any difference at all, and, if so, in favor of which method of handling?

Mr. LEEDS: I do not know as I can say that there would be any difference, or enough to mention. There would be more liability of breaking the package in barrels than in boxes in all probability, unless the barrels are better than ordinarily used for such commodities.

Mr. MAXWELL: Are you familiar with the barrels that have been used for the past three years, or used in 1899, in Central Territory for the packing of alum?

Mr. LEEDS: No, I have not observed within that period.

Mr. MAXWELL: Do you know what the practice is in Central Territory or was in 1899 with respect to whether shippers loaded carload lots themselves?

Mr. LEEDS: I believe the rule of the Classification provides
2741 that they shall load and unload carload freight.

Mr. MAXWELL: But you have no knowledge of that?

Mr. LEEDS: That is the rule of the Classification.

Mr. MAXWELL: You have no knowledge of the actual practice, have you?

Mr. LEEDS: I presume that they enforce the rule they publish.

Mr. MAXWELL: I ask you if you have any knowledge of the actual practice?

Mr. LEEDS: So far as whether they do what they profess to do or not, I have no means of knowing that.

Mr. MAXWELL: Can you tell what the practice was at any time in
e last ten years in Central Territory?
Mr. LEEDS: Only so far as their published rules apply.
Mr. MAXWELL: Then you do not know what the actual practice
as at any time in the past ten years in Central Territory?
Mr. LEEDS: Only so far as their published rules imply what they
.
Mr. MAXWELL: Is alum liable to damage other freight in the
me car?
Mr. LEEDS: I should think not.
Mr. MAXWELL: Is copper ore liable to damage other freight in
the same cars?
742 Mr. LEEDS: Copper ore shipped in less than carload quanti-
ties with other freight would very likely be in packages and
ould not likely damage other freight.
Mr. MAXWELL: How about rice?
Mr. LEEDS: It would not damage other freight. It might receive
amage from other freight.
Mr. MAXWELL: How is rice packed for transportation in Central
erritory, if you know?
Mr. LEEDS: The general trade usually pack it in barrels or hogs-
eads. It is sometimes shipped in bags.
Mr. MAXWELL: Is salt liable to damage other articles of freight
the same cars?
Mr. LEEDS: Not, ordinarily; no, unless they were susceptible to
amage from dampness that might be created by the package.
Mr. MAXWELL: How is salt packed for shipment in Central Ter-
tory?
Mr. LEEDS: Generally in barrels.
Mr. MAXWELL: With respect to the difficulties of handling, is
here anything peculiar to salt?
Mr. LEEDS: No.
Mr. MAXWELL: Would it be handled with more, or less, difficulty
than soap?
743 Mr. LEEDS: It would be subject to the same conditions that
would apply to other barrel freight.
Mr. MAXWELL: I believe you said there is no appreciable differ-
nce between barrel freight and box freight in that respect.
Mr. LEEDS: Only the difference that might occur from breakage
f packages, which might be more liable to occur in barrels than in
oxes. In fact, the rolling of a package would be more liable to
reak it than though it were placed on a truck.
Mr. MAXWELL: Have you had any experience in the rolling of
ackages of salt or soap?
Mr. LEEDS: I never rolled very many of them myself. I have
een a good deal of it done.
Mr. MAXWELL: Have you in the last three or four years had any
bservation of the practice of rolling of salt or handling of soap?
Mr. LEEDS: No, sir.
Mr. MAXWELL: Or any observation of what, if any, damage was
done to either in freight handling?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know to what commercial uses alum is put?

Mr. LEEDS: I know some of them. It is used quite largely,
2744 I think in filtering; that is, in water filtering. I think they use it in that; and it is put to various uses in connection with drugs and chemicals.

Mr. MAXWELL: In its use in water filtering, by whom, or what class of dealers, is it purchased?

Mr. LEEDS: It occurs to me that it might be anybody who might have large quantities of water they wanted filtered. It is recommended to cities and water-works generally to be used for that purpose. I am not familiar with the process of its use.

Mr. MAXWELL: Do you know by what dealers it is purchased—actual knowledge?

Mr. LEEDS: Druggists use some of it, and almost any country store will have alum in it. It is used in coloring, for dyeing purposes to a considerable extent, I think, in what they call "setting" of colors.

Mr. MAXWELL: What class of dealers purchase for that use?

Mr. LEEDS: Dyers and colorers would use it for that purpose—dye works.

Mr. MAXWELL: Where does that originate? Where does alum originate?

Mr. LEEDS: It is a product of the mine or clay. I do not
2745 know where it originates exactly. I think some of it is made in this country, and perhaps some may be imported.

Mr. MAXWELL: To what extent is it made in this country and where?

Mr. LEEDS: I do not know the volume of the business.

Mr. MAXWELL: Where—if any of it is made in this country?

Mr. LEEDS: I am unable to answer that question.

Mr. MAXWELL: To what extent is it imported and from what countries?

Mr. LEEDS: That I do not know; in fact, its volume is certainly not suffiicient to induce the manu*aft*ure of it to any great extent or over any wide area of territory. At least, I have never seen alum factories.

Mr. MAXWELL: You cannot tell us where a single alum factory is in the United States?

Mr. LEEDS: I do not know as to that.

Mr. MAXWELL: You don't know that there is any?

Mr. LEEDS: I think there is.

Mr. MAXWELL: I ask you whether you know.

Mr. LEEDS: I have never seen one; I have been told so.

Mr. MAXWELL: Where are they?

Mr. LEEDS: I do not remember.

2746 Mr. MAXWELL: Do you know to what extent rice is used for the manufacture of beer?

Mr. LEEDS: I do not know how much, but there is quite a large quantity of what they call broken rice, rice meal and brewer's rice

as they call it, used. How much, I am not familiar with that, not further than to say that there is a large quantity of it used.

Mr. MAXWELL: How is rice packed for shipment?

Mr. LEEDS: Usually in barrels or hogsheads; sometimes in bags. Probably this rice I speak of would be very likely or apt to — packed in bags.

Mr. MAXWELL: What rice?

Mr. LEEDS: Brewers' rice.

Mr. MAXWELL: How is it packed for domestic purposes?

Mr. LEEDS: Sometimes in barrels and sometimes in bags.

Mr. MAXWELL: Is there any difference——

Mr. WARRINGTON: That differs from brewers' rice?

Mr. LEEDS: Yes, sir; it is a better quality.

Mr. MAXWELL: Is there any difference in the handling of rice in barrels and in bags, and, if so, in favor of which method?

Mr. LEEDS: So far as rice is concerned, I would rather handle it in a wooden package than in bags.

2747 Mr. COLSTON: Why?

Mr. LEEDS: It is less susceptible to damage on account of its general character in a wooden package than in bags.

Mr. MAXWELL: Damage from what?

Mr. LEEDS: Damage from oil or leakage from another package.

Mr. MAXWELL: Have you had any observation of the actual operation and effect of packing or shipping rice in either of these methods with reference to damage to the article?

Mr. LEEDS: Only so far as it is obviously apparent that that would be true.

Mr. MAXWELL: I am asking whether you have any observation or experience as to damage to rice packed in bags on account of leakage or other effect from other articles?

Mr. LEEDS: I do not recall that I have, but I have paid claims for the loss of rice on account of leakage from the packages.

Mr. MAXWELL: You mean on account of damage from leakage from other packages?

Mr. LEEDS: On account of packages breaking and leakage from them.

Mr. MAXWELL: Other packages breaking?

2748 Mr. LEEDS: No; on account of the packages it was shipped in itself.

Mr. MAXWELL: The rice package breaking?

Mr. LEEDS: Yes, sir; hogsheads and barrels break and contents leak out.

Mr. MAXWELL: You say you have had instances of that kind?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Where did you have them?

Mr. LEEDS: I don't know that I can name an individual instance, but that is a general feature of damage to the commodity.

Mr. MAXWELL: Where did you have such instances with respect to rice, and when?

Mr. LEEDS: I suppose when in the railroad service I did; when I had anything to do with adjustment of claims.

Mr. MAXWELL: Then you are speaking of damage to articles generally?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: Do you know whether any rice comes from the Southern States and, if so, what amount?

Mr. LEEDS: There is some rice produced in Louisiana, more in South Carolina I think, and probably in Georgia to some extent, and considerable quantities are imported on the Pacific and quite large quantities are imported at the Atlantic Seaboard.

2749 Mr. MAXWELL: What is the tonnage of the rice that comes from the Southern States?

Mr. LEEDS: I do not know as to that. I believe the Custom House—or the statistics published by the United States will give the quantities produced in this country and those imported. I have not the data here to answer the question; I do not know.

Mr. MAXWELL: Do you know the quality of rice that is produced in the Southern States?

Mr. LEEDS: The quality produced in our Southern States is better, or supposed to be better, than the imported article.

Mr. MAXWELL: How is coke petroleum packed?

Mr. LEEDS: I do not know as to that.

Mr. MAXWELL: Do you know where it is produced?

Mr. LEEDS: I do not know, but I think the Standard Oil Company very likely produce coke petroleum.

Mr. MAXWELL: Do you know its tonnage?

Mr. LEEDS: No.

Mr. MAXWELL: Can you give us any idea of its tonnage?

Mr. LEEDS: No, sir; I cannot.

Mr. MAXWELL: Do you know from where it is shipped?

Mr. LEEDS: No, I do not know exactly where it is shipped.

2750 I know it is a specialty. It is a highly concentrated fuel and might be considered in that respect as a luxury.

Mr. MAXWELL: Do you know where it is used?

Mr. LEEDS: It is used to some extent in firing engines where the fuel space is slight or where better fuel is required; say, for pleasure yachts. At least I have been told that that is where it is used.

Mr. MAXWELL: Did you ever see any coke petroleum?

Mr. LEEDS: No, sir; I never did.

Mr. MAXWELL: Where is core compound in its liquid form made?

Mr. LEEDS: I don't know.

Mr. MAXWELL: What is its tonnage?

Mr. LEEDS: I don't know as to that.

Mr. MAXWELL: Where is it shipped?

Mr. LEEDS: It is used I believe at brass foundries on castings; perhaps bronze and brass, and copper likely. I have been told so; I have not seen it used. I have been told that it is used to produce a smooth surface on those castings, or a polish perhaps.

Mr. MAXWELL: Did you ever see any of it?

Mr. LEEDS: No, sir.

2751 Mr. MAXWELL: And you don't know where it is manufactured or by whom?

Mr. LEEDS: No; I have never seen a factory where it was made.

Mr. MAXWELL: Where are there any starch factories in Central Territory that you know of?

Mr. LEEDS: There is one at Dayton, I believe; one at Cincinnati. There are probably three or four here. I know there is one situated out on the Canal here, not very far from Procter & Gamble—not very far from Cumminsville—Locklands I believe they call it. There is one at Dayton; one at Buffalo. I have never been in the factories or seen them, but I believe I have observed on packages that the starch was made at the points I have named.

Mr. MAXWELL: What starch factory is there at Dayton?

Mr. LEEDS: I do not know the name of it; there may not be one there. I may be in error as to that, but I think there is.

Mr. MAXWELL: Have you named all of the starch factories that you know of in Central territory?

Mr. LEEDS: I have named all in my mind.

Mr. MAXWELL: Do you know how much starch they produce?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know where they get their corn?

2752 Mr. LEEDS: I suppose corn is obliged to come from the West.

Mr. MAXWELL: I didn't ask you what you suppose. I asked whether you knew.

Mr. LEEDS: They buy their corn in the market where they can buy the cheapest.

Mr. MAXWELL: Do you know that?

Mr. LEEDS: They are obliged to do that.

Mr. MAXWELL: Do you know anything about where they buy their corn?

Mr. LEEDS: So far as that is concerned, I don't go with them to buy their corn.

Mr. COLSTON: Have you taken any pains to inform yourself upon this point with reference to the starch business?

Mr. LEEDS: No; why should I?

Mr. MAXWELL: Do you know of a starch factory at Columbus, Indiana?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Did you ever hear of it?

Mr. LEEDS: I don't know that I have.

Mr. MAXWELL: Do you know of a starch factory at Indianapolis, Indiana?

2753 Mr. LEEDS: I never have seen one there, though I believe, since you mention it, there is one there.

Mr. MAXWELL: Do you know anything about its size or production?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Or where it gets its corn?

Mr. LEEDS: Naturally from the West.

Mr. MAXWELL: But you don't know anything about it—you assume that it does?

Mr. LEEDS: Yes, I know a good deal about it. I know that that is naturally where it would come from.

Mr. MAXWELL: Do you know anything about a starch factory at Madison, Indiana?

Mr. LEEDS: Nothing.

Mr. MAXWELL: Did you ever hear of one there?

Mr. LEEDS: I do not know that I have.

Mr. MAXWELL: Do you know anything about a starch factory at Glen Cove, New York?

Mr. LEEDS: Yes, sir; I have heard of it; it is supposed to be quite a large producer. I never have seen it.

Mr. MAXWELL: Do you know anything about its comparative production or actual production?

2754 Mr. LEEDS: No, sir, except that it is said to be very large.

Mr. MAXWELL: Do you know of a starch factory at Oswego, New York?

Mr. LEEDS: Yes, sir; I have heard of it and used the starch,—or seen it used.

Mr. MAXWELL: Do you know whether there is more than one?

Mr. LEEDS: I do not know how many there are there. There is at least one.

Mr. MAXWELL: Do you know anything about the business of that concern as to the amount of its production?

Mr. LEEDS: I infer it is large.

Mr. MAXWELL: Why do you infer that?

Mr. LEEDS: Because I see a great deal of it on sale in different parts of the country, and infer that they produce a great deal in order to do a large business like that.

Mr. MAXWELL: What do you mean by "large"?

Mr. LEEDS: Spread over a large territory.

Mr. MAXWELL: Give what your idea of largeness is in the pounds of starch produced at Oswego, New York?

Mr. LEEDS: I do not know that I can make an estimate of it.

Mr. MAXWELL: Make a comparison, or I will ask you to state the number of pounds or any approximate of starch made at Oswego, New York?

2755 Mr. LEEDS: I don't know.

Mr. MAXWELL: Can you tell us the amount of starch made in Central Territory as compared with the amount of starch made at manufactories situated in the corn belt?

Mr. LEEDS: No, sir; I have no data on the subject.

Mr. MAXWELL: You have never made an inquiry on that subject?

Mr. LEEDS: I have not investigated it; no, sir.

Mr. MAXWELL: Do you know where the factories at Oswego and at Glen Cove sell their starch?

Mr. LEEDS: So far as my observation has extended, it must be pretty large. I have seen it on sale I think pretty well west. I think I have seen — on sale in the Western country to some extent; certainly as far west as Ohio, but so far as their busines- in the opposite direction is concerned I do not know.

Mr. MAXWELL: Do you know where the Cincinnati factories sell their starch?

Mr. LEEDS: I suppose they give it as general a distribution as they

can in all directions. They export some starch from here, and I know they ship it as far West as the Pacific Coast.

Mr. MAXWELL: Do you know where the factories at Madison, Indiana, sell their starch?

Mr. LEEDS: I have never seen it on sale.

2756 Mr. MAXWELL: You don't know that there is such a factory, do you?

Mr. LEEDS: I told you I had not heard of it.

Mr. MAXWELL: How many starch factories do you know of west of the Mississippi?

Mr. LEEDS: I do not know of but very few starch factories there. There are I believe several. I recall to mind at this moment one.

Mr. MAXWELL: Where is that?

Mr. LEEDS: One at Ottumwa, Iowa. I think there is another at Clinton, if I am not mistaken; I believe there is one at Clinton.

Mr. MAXWELL: Do you know of any in Nebraska?

Mr. LEEDS: I do not know where the factories are in Nebraska. There are some there I believe.

Mr. MAXWELL: Do you know where those factories west of the Mississippi sell their starch?

Mr. LEEDS: Not definitely, but naturally in their own territory and East. The grain is cheaper than the grain in this territory and they could ship in the same general direction as their grain moves no doubt. I think they export some starch from there; I am not sure.

2757 Mr. MAXWELL: Then so far as your observation goes, these starch factories all over the United States, wherever they may be, sell all over the United States, do they?

Mr. LEEDS: I did not say so.

Mr. MAXWELL: Then please tell us whether you know and, if so, what the fact is.

Mr. LEEDS: I do not know the fact as to that.

Mr. MAXWELL: Assuming that the starch manufacturers having their factories located in the corn belt sell in the East, do they have any advantage over the Eastern manufacturer, and, if so, what?

Mr. LEEDS: Well, so far as their shipments from the West to the East, unless they are carried at a rate different from the Classification, they would not have much advantage as they do have in the shipment of the raw grain. The classification of starch would produce a higher rate from the Western country up to the connection with the Central Traffic Association lines than is charged on the raw grain.

Mr. MAXWELL: How would the manufacturer of starch in New York, Glen Cove, Oswego, and Rochester, be situated with respect to the factories located in the corn belt?

2758 Mr. LEEDS: The facility for disposing of the residue or offal from the factory would be naturally better in the East than it would be in the West, because there would be a larger difference no doubt between the price of products that go to the same use in the East than in the West.

Mr. MAXWELL: What is the offal of a starch factory and to what use is it applied?

Mr. LEEDS: I believe to some extent for feed. The hulls and such as that would naturally go into feed.

Mr. MAXWELL: Are you giving your impressions, or do you know about this?

Mr. LEEDS: I do not know all the uses that it might be put to, but there would be a greater difference naturally between that and the raw product in the East than in the West. There would be some difference between the shipment of the product from out there and the shipment of the raw material and in the disposition of whatever residue there is.

Mr. MAXWELL: What is the residue?

Mr. LEEDS: Hulls.

Mr. MAXWELL: Used for cattle feed?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: What other residue is there?

2759 Mr. LEEDS: I do not know all the residue that comes from starch.

Mr. MAXWELL: I did not ask for all. I ask you for any except that used for cattle feed.

Mr. LEEDS: I do not know what they all are.

Mr. MAXWELL: Do you know any use to which any of the residue of a starch factory is applied except for feed for cattle?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know what prices are obtained for that residue at Glen Cove?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know what prices are obtained for that residue at Ottumwa, Iowa?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Do you know the price at any starch factory in the United States?

Mr. LEEDS: I will tell you what I draw my conclusions from——

Mr. MAXWELL: Please answer my question.

Mr. LEEDS: I will answer your question if you give me an opportunity.

Mr. MAXWELL: Answer the question.

Mr. LEEDS: No.

2760 Mr. WARRINGTON: Go on and state your conclusions.

Mr. LEEDS: I draw my conclusions from this: that the residue from factories producing other cereal products like hominy and oat meal, consisting of oat hulls, and the hulls of the corn that come from the production of hominy are sold in the West cheap enough to admit of their shipment to this State for feed for live stock as against the price of the raw grains in this State; and that being the case I draw the inference that the residue from the production of these commodities would be greater price here comparatively than raw grain, or else this quality of feed would not be susceptible of shipment from the West to this State.

Mr. MAXWELL: Do you know what price is obtained for the feed residue of starch factoried in this State?

Mr. LEEDS: Not of starch factories, but the hulls from other

factories such as I have just mentioned are sold here between $13 and $14 per ton laid down.

Mr. MAXWELL: That is, hulls from hominy factories?

Mr. LEEDS: Yes, sir; and oat meal factories.

Mr. MAXWELL: You don't know whether the feed residue of starch factories sells for less or what price?

Mr. LEEDS: I do not know. I have not bought any.

2761 Mr. COLSTON: Let me ask a question. You said a while ago that these starch factories would naturally get their corn from the cheapest place. Where would be the cheapest place?

Mr. LEEDS: In the market from whence it could be obtained from the West at the lowest rate or price.

Mr. COLSTON: Then the Western starch factories have a better opportunity for buying corn cheap than the Eastern?

Mr. LEEDS: Naturally so, because the Gulf ports and the Atlantic Seaboard fix the price and the Chicago market, which perhaps is governed, or no doubt governed, by the Eastern or export price, would fix the price of grain at its point of production unless some local demand might create a local difference somewhere which is not appreciable.

Mr. COLSTON: What do you mean by the point of production of corn?

Mr. LEEDS: What we may call the corn belt of this country.

Mr. COLSTON: Where is that?

Mr. LEEDS: It begins with Illinois and Iowa and some extent in the States of Missouri, Nebraska and Kansas. That is the principal corn belt of the country.

Mr. COLSTON: It is in that region, in that corn belt, where corn is sold the cheapest of any place in the United States?

2762 Mr. LEEDS: That is my observation.

Mr. COLSTON: Then the starch factories situated in that corn belt have an opportunity to get their raw material, the principal of which is corn, at less prices and at the best advantage?

Mr. LEEDS: That is true.

Mr. COLSTON: Then, if that corn has to be transported East to make starch out of it, the Eastern starch maker has to get a low rate of freight to pay the rate on the corn East and then the starch west in order to compete with Western starch makers?

Mr. LEEDS. If he shipped west, he would have to have a low rate.

Mr. COLSTON: You said you had been about a month in the preparation of your testimony in this case, did you not?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: Where have you been making that preparation—at what place?

Mr. LEEDS: Largely at the office of Procter & Gamble.

Mr. COLSTON: That office is right here in this building where we are taking this testimony?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: The same building as the office of the at-

2763 torneys of Procter & Gamble, who are prosecuting this case?

Mr. LEEDS: I take this to be the office of the attorneys; yes, sir.

Mr. WARRINGTON: It is the office of Mr. Warrington, but not of Mr. Matthews.

Mr. COLSTON: Please read the question, Mr. stenographer.

The question was read.

Mr. COLSTON: Put it on one of you then. Let it stand that way if you want it changed. Mr. Leeds, has that month's work been a constant work, pretty steady?

Mr. LEEDS: No, sir; not constant. I have been here in the city probably from two to four days in a week I expect for six weeks. I do not remember the exact date that I came here.

Mr. COLSTON: I do not care particularly about the date. It is fair to say that it has been a month's steady work, is it not?

Mr. LEEDS: Including what work I may have done at home, I should think it may have been a month.

Mr. COLSTON: Who assisted in that work?

Mr. LEEDS: Mr. Macdonald has assisted me mainly.

Mr. COLSTON: Who else?

2764 Mr. LEEDS: I consulted with Mr. Warington to some extent, not very largely, however, because he has been absent considerable of the time.

Mr. COLSTON: Who else?

Mr. LEEDS: Mr. Wilson has taken some hand in the investigation.

Mr. COLSTON: Was Mr. Wilson preparing himself at that same time to be a witness?

Mr. LEEDS: I do not know that he was exactly preparing himself to be a witness.

Mr. COLSTON: When did you consult with him?

Mr. LEEDS: At several periods during my preparation of the papers that I have made here.

Mr. COLSTON: At what place did you consult with Mr. Wilson?

Mr. LEEDS: In the office upstairs in this building.

Mr. COLSTON: Procter & Gamble's office?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: Was a room set apart for your work and Mr. Wilson?

Mr. LEEDS: I did my work in one room; yes, sir.

Mr. COLSTON: How much of the time was Mr. Macdonald

2765 there?

Mr. LEEDS: He has been at hand or call almost all of the time.

Mr. COLSTON: As a matter of fact you have done this work of preparation under Mr. Macdonald's direction, with his advice?

Mr. LEEDS: I do not know that I can say that; I have done more with what I have presented here with respect to my testimony than anybody else.

Mr. COLSTON: You have done it under his constant suggestion and advice, have you not?

Mr. LEEDS: No.

Mr. COLSTON: Has he not frequently given you advice and suggestions as to your work?

Mr. LEEDS: I expect I have given him more advice.

Mr. COLSTON: Please answer the question.

Mr. LEEDS: I have advised with Mr. Macdonald one way or the other.

Mr. COLSTON: Didn't Mr. Macdonald tell you what he wanted you to do and what he wanted to show?

Mr. LEEDS: No.

Mr. COLSTON: Didn't he tell you anything about what he wanted you to show?

2766 Mr. LEEDS: I have no doubt he has told me what he wanted to show during the conferences, but as to general direction of what I did, no.

Mr. COLSTON: He came to you at your farm in the country in Claremont County, Ohio, did he not, and engaged you for this service?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: Did he tell you how he came to know of you?

Mr. LEEDS: No, I don't know that he told me how he came to know of me. He knew of me in connection with my service in a general way. I was not so obscure that I might not be known without somebody pointing me out.

Mr. COLSTON: You had no connection with the soap business, and Mr. Macdonald's connection was with the soap business. How was it he came for you?

Mr. LEEDS: I don't know.

Mr. COLSTON: What are you getting for your services in this case?

Mr. LEEDS: I don't know.

Mr. COLSTON: Have you received nothing?

Mr. LEEDS: I have had some expense accounts up to the present time.

2767 Mr. COLSTON: Have you received nothing for your services, the labor you have put on this case, the labor of a month to six weeks?

Mr. LEEDS: I stated to you that I have been employed for this service, and employment implies payment.

Mr. COLSTON: You don't know what the payment is to be?

Mr. LEEDS: No, sir.

Mr. COLSTON: You have rendered no bill?

Mr. LEEDS: No, sir.

Mr. COLSTON: What are you expecting?

Mr. LEEDS: I am expecting to receive what I earn.

Mr. COLSTON: What have you earned?

Mr. LEEDS: I don't know what I have earned, and do not know that it makes any material difference what my bill is.

Mr. COLSTON: It does in a legal sense. I am not asking out of idle curiosity.

Mr. LEEDS: I do not know what it will be.

Mr. COLSTON: Then there is no limit on your price?

Mr. LEEDS: No.

Mr. COLSTON: You are going to render a bill for what you deem your services worth?

Mr. LEEDS: I may or I may not.

2768 Mr. COLSTON: You have no limit except your own judgment?

Mr. LEEDS: I presume they will pay what I present if it is reasonable.

Mr COLSTON: Who prepared these various statement that have been presented here?

Mr. LEEDS: I prepared the most of them.

Mr. COLSTON: You prepared the manuscript?

Mr. LEEDS: I prepared the manuscript in lead pencil?

Mr. COLSTON: Did you do that alone and unassisted?

Mr. LEEDS: Almost wholly alone..

Mr. COLSTON: Who asked you to read this testimony over, the testimony in this case?

Mr. LEEDS: I read that for my own information.

Mr. COLSTON: Who gave it to you?

Mr. LEEDS: I believe I obtained that from Mr. Macdonald.

Mr. COLSTON: How much have you read of it?

Mr. LEEDS: About fourteen hundred pages.

Mr. COLSTON: Did he tell you to read all of it?

Mr. LEEDS: He told me to read such of it as I thought would be of interest to me. I wanted to know about the case and I read the most of it.

Mr. COLSTON: I understand that the last railroad in whose

2769 employ you were was the Missouri Pacific?

Mr. *Colston:* If you want to know my direct employment by a railroad; yes, sir.

Mr. COLSTON: The Missouri Pacific?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: And you quit that in 1891? Is that right?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: How old were you at that time?

Mr. LEEDS: I was about 47 years of age.

Mr. COLSTON: What position did you have then?

Mr. LEEDS: I was Freight Traffic Manager.

Mr. COLSTON: Where were your headquarters?

Mr. LEEDS: St. Louis.

Mr. COLSTON: What reason did you have for leaving that job?

Mr LEEDS: I left that job because I was tried for violation of the rule of what was known at that time as the "gentlemen's agreement"; tried before the advisory board, composed of the president and one director of each road, and the road was convicted of a violation of the agreement, and I was the man who violated the agreement; and one of the rules of that agreement was that a man should be dismissed from the service for violation of that agreement. I left the service for that reason.

2770 Mr. COLSTON: The violation you speak of consisted of cutting rates, did it not?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: And you left the service for cutting rates in the service of the Missouri Pacific Railway?

Mr. LEEDS: Yes, sir.
Mr. COLSTON: That is all.

Redirect examination:

Mr. WARRINGTON: Tell us about this sugar trust transaction, ow long it was to last and what Jay Gould did in this connection. ell it all. After such an outrageous thing as this, I would like he Commission to know it all.

Mr. LEEDS: The facts in the case are these. When I took employ- nent with the Missouri Pacific Railroad and the Iron Mountain hey had opened a line from the Atlantic Seaboard through Mem- his to the Missouri River known as the Paint Rock Line.

Commissioner FIFER: Do you think that important, Mr. Warring- on?

Mr. WARRINGTON: I do, your honor. I do not think he ought to have an aspersion put upon him when it belongs to someone else. It was an outrageous combination. I do not think it is fair to a man to go that far and then give him no opportunity to ex-
2771 plain it.

Mr. LEEDS: I want to say to your honor that I have been asked for but half the truth and have not had the privilege of tell- ing the whole. The Paint Rock Line had no agreement with the Trunk Lines at the time as to what their differential should be under the all-rail rate between New York and the Mississippi River. They insisted on 5 cents per hundred pounds, and by means of that 5 cents reduction up to Memphis secured a large proportion of the sugar trust shipments of sugar. After my connection with the road I was importuned at various times to shut out the Paint Rock Line through Memphis in order that this sugar business might be divided more equally as they put it.

Mr. MAXWELL: As who put it?

Mr. LEEDS: The lines particularly west of Chicago. I declined to do it, because I was maintaining my rate west of Memphis at the west of the Mississippi River figure. After a short period the sugar shipments ceased by way of Memphis and began coming by way of the other routes, and the Missouri Pacific and Iron Mountain roads received but very little more sugar. I met Mr. Midgley, Chairman of the Western Freight Association, shortly afterwards, and he in- formed me that he did not think my Paint Rock Line would get very much more sugar very soon, and I told him I would
2772 find out how the other fellow got it if I could. That state of affairs ran along for about a year and a half, during which time we got very little of the sugar for points west of the Mississippi River. When the law went into effect which reduced the duty on sugar to free, the Western dealer reduced his stock on hand to a very low point, as low as he could, and as a result of which there was a very large amount of sugar to be sent from the Atlantic Sea- board to the western points, amounting in round numbers to some- thing like 40,000 barrels. I was in New York at the time and my representative there told me that we ought to get some of the sugar, and I told him that the other parties had been cutting the rate

and had been for a year and a half and I did not care to engage in it; that we could do without it. Well, he said, the Sugar Trust people feel friendly to you and would like to see you get some of this movement of sugar and if you can make a rate that will meet what is going on, you can get it. I stated to him that "I will be in New York in two weeks from this time, or about there, and if in the meantime you can find out definitely what the other parties have been doing and are doing at the present moment, will make a rate that
2773 will secure some of the sugar." I went to New York at the end of that two weeks, and he says, "I have found out what has been going on for a year and a half and what is to-day the rule." I says "What is it." He states to me that the Trunk Lines in connection with the Western Freight Association, or such lines of that association as connect with the Central Traffic lines at junction points in the State of Illinois on a percentage basis, had made an agreement with the Sugar Trust whereby they made an allowance of 4 2/10 cents per hundred pounds for lighterage and handling of that sugar in the harbor of New York in the delivery of it to the lines at their shipping stations and that this contract was to extend over a period of twenty years.

Mr. WARRINGTON: That is, the contract between the Sugar Trust and whom?

Mr. LEEDS: Between the Sugar Trust and the lines to the Mississippi River. I said to him, If that is the fact—I don't want all of the sugar—but if that is the fact you make whatever rate is necessary to secure a portion of this sugar, say, one-half. The Chicago & Alton Railroad had at that time made a rate on sugar—they didn't want all of it—but they made a rate which secured as much of that traffic as they wanted or that they thought would be safe to
2774 take, and in order to come to a fair understanding of the case and not be tracking over each other, I saw the representative of the Chicago & Alton Railroad and determined with him the amount—or ascertained from him—the amount he was reducing the rate to secure the sugar on, which amounted to 5 cents per hundred pounds to the Missouri River mainly. Well, the reduction applied east of the Mississippi River, the 5 cents, as he gave it to me at that time. I gave my agent instructions. He asked me what about the law. I says, "So far as the law is concerned, I will take the responsibility for making this rate and if anybody goes before the Federal grand jury for indictment in this case, I will go; I will take care of myself in this case. Do what I tell you. I am making the rate." So he went and made a rate 5 cents less than the tariff to the Missouri River, quoted a through rate. I told him to let me know five or six days before any of that sugar was to be loaded in New York and I would give him instructions as to the routing of it and the method of handling it. He telegraphed me, and I told him then to prepare a tariff at the rate he had quoted making a through tariff from New York to the Missouri River and to route his business by the Old Dominion Steamship Company and the Kanawha Dispatch. I did that without any agreement or understanding
2775 with the Kanawha Dispatch or its representative; I did not ask them any questions. I simply gave it to them and paid

m their tariff from New York to the Mississippi River. He pub-
ed the tariff and he sent his notice to the Interstate Commerce
nmission. He posted that notice, or that tariff, at the point of
pment and kept a copy at his own office and sent me the balance,
I attended to the posting of it at the point of destination. That
he history of how I cut the sugar rate, and I did it, not to get the
ar, but to break up our relations, if you please, with the Chicago
ciations. When it came to the trial Mr. Gould let me fall be-
se I did not ask him if I should make the rate. I did it on my
n responsibility; but he came to me in my room in the hotel after
trial had taken place and the resolution had been passed in the
eting which provided for my dismissal from the service, and said
me——

Mr. MAXWELL: Do you think we ought to have the statement
de by a dead man?

Commissioner FIFER: He is brought here, this witness, as an ex-
t and shown a knowledge of the railroad business to admit him
an expert. Of course if he had been dismissed because of any in-
mpetency or lack of knowledge of the business he was engaged in,
that would be proper evidence, but having been discharged
76 for a matter of this kind, it does not seem to be important
one way or the other.

Mr. MAXWELL: We object to allowing to go on this record the
tement of a dead man.

Mr. BAYLESS: We object to this testimony.

Mr. WARRINGTON: I do not think that the Interstate Commerce
mmission ought to take half of this story only.

Commissioner FIFER: It seems that the gentleman regards it as a
rt of personal reflection. I do not suppose it will influence the
mmission one way or the other.

Mr. WARRINGTON: What did he say?

Mr. LEEDS: Mr. Gould stated to me——

Mr. MAXWELL: What Mr. Gould?

Mr. LEEDS: Jay Gould.

Mr. MAXWELL: He is dead, is he not?

Mr. LEEDS: Yes, sir.

Mr. MAXWELL: How long has he been dead?

Mr. LEEDS: About nine years now.

Mr. MAXWELL: We object upon the ground that this witness
ould not be permitted to state the conversation he claims to have
ad with a dead man.

Mr. WARRINGTON: Go ahead.

Mr. LEEDS: He came to my room in the Windsor Hotel,
777 New York, and asked me there not to tie myself up to any-
body else, because, he stated to me, that they wanted to get
e back with the Missouri Pacific and the Iron Mountain roads. He
ays, "You have the best organization of the Freight Department of
he Iron Mountain and the Missouri Pacific roads that we have ever
ad and you have been doing the best work." That is sufficient I
hink.

Mr. WARRINGTON: Who was this representative that you speak of—this man in New York whom you alluded to several times?

Mr. LEEDS: It was Mr. Logan, General Agent of the Missouri Pacific and Iron Mountain roads.

Mr. WARRINGTON: Who was the man in charge of the lighterage there and who was doing terminal work?

Mr. LEEDS: I never learned. I never went beyond our own man in that matter.

Mr. WARRINGTON: What was it you were saying of an agreement whereby the sugar was handled at New York?

Mr. LEEDS: There was an allowance accord*ance* to his information at that time—that there was to be 4 2/10 cents per hundred pounds out of the rate through the Mississippi River allowed to the Sugar Trust for handling and lighterage. They loaded the sugar in the cars and attended to the lighterage of that up to the shipping point or delivery point of the rail line from which it was to be forwarded.

2778 Mr. COLSTON: You are now stating what somebody else told you?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: We enter objection that it is not a necessary part of his explanation.

Mr. LEEDS: It is a customary method of handling business to take the word or to be governed more or less at least by the representation of your representative on the ground.

Mr. WARRINGTON: What is Mr. Logan's name?

Mr. LEEDS: Mr. Logan is dead. His name was Henry C. Logan.

Mr. WARRINGTON: Was he then the accredited agent of your line under your direction?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Getting information from you and for you?

Mr. LEEDS: Yes, sir; and got orders from me; under my direction.

Mr. WARRINGTON: Where was this lightering and handling done?

Mr. LEEDS: From the refinery to the shipping point of the road. I think there were two or three refineries in operation at that time, one at Brooklyn and one somewhere over on the Jersey side.

2779 Mr. WARRINGTON: Do you know a man of the name of Lowell Palmer?

Mr. LEEDS: I don't know him. I have heard of him.

Mr. WARRINGTON: Do you know whether he was in charge of that lighterage company?

Mr. LEEDS: I don't know.

Mr. WARRINGTON: Was that a local lighterage and terminal company doing that work?

Mr. LEEDS: I did not so understand it at that time. My information——

Mr. Colston entered an objection on the ground that it was hearsay evidence.

Commissioner FIFER: Did that information come to you in the ordinary and usual course of business?

Mr. LEEDS: Yes, sir.

Mr. COLSTON: We ask that the witness be required to state his knowledge.

Mr. WARRINGTON: According to the information you obtained, if you obtained any through the ordinary channels and upon which you acted, who was doing this lighterage and terminal handling of the sugar for which 4 2/10 cents was paid?

Mr. MAXWELL: We object on the ground that it calls for hearsay evidence.

2780 Mr. LEEDS: My information at that time was that, as it was reported to me, the facilities for this business then were in the hands of the Sugar people themselves; that they owned tugs and facilities for handling that business, and that they were doing that and that they did handle to a large extent at that period their own business in both directions. I didn't have any information which would indicate that it was being done through a third party.

Mr. WARRINGTON: Your information was that it was the Sugar Trust?

Mr. LEEDS: It was stated to me that the Sugar trust were doing this; whether they had some auxiliary organization through which they worked or not I was not informed.

Mr. WARRINGTON: Did you act on that information?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Was that one of the controlling reasons which led you to adopt the course you have described?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Now, as respects the work you have done in your analysis of schedule 20, were you not asked to advise us as an expert of what ought to be done and told that we would endeavor to give you such clerical assistance as you would direct?

2781 Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Were you requested by anybody to do or say anything except that which emanated from you as your understanding of the truth?

Mr. LEEDS: No; nobody asked me to tell anything but the truth.

Mr. WARRINGTON: Has this work which you have shown the results of here been from your own standpoint as a man having special knowledge of freight traffic rates and classification?

Mr. LEEDS: So far as the analysis of that classification is concerned it is entirely so.

Mr. WARRINGTON: Now, is there anything that you have taken from the Procter & Gamble Company or any of its representatives of any kind in the way of information, unless it was of some merely general kind to ascertain the use of certain articles, such as some of these unnameable things in this classification, as to what they were?

Mr. LEEDS: I do not know but there may be some things in there that you had on hand that I looked through. I had access to the papers and I took them and went through them and acted upon them. I asked for other papers no doubt and made suggestions as to those you already had, and in that way I have very likely used papers you had on hand and may have pre-

2782

pared since; but so far as the general trend of this thing, it has been in accordance with my ideas as an expert in classification matters.

Mr. WARRINGTON: Is there anything that you have given here or stated which does not emanate from your own knowledge and experience and accord with it?

Mr. LEEDS: I have not put in anything there not in harmony with my views on the subject.

Mr. WARRINGTON: As to the reading of this testimony, was that a desire of yours to familiarize yourself with what had been done and said by these so-called experts for the railroads?

Mr. LEEDS: Yes; and, on the contrary to your having advised me to read the testimony, I was advised not to read so much of it; that it was unnecessary to wade through the large volume, but I preferred to do it, because I wanted to know more about the case.

Mr. WARRINGTON: Nobody asked you to read all those Pennsylvania Company's exhibits that came from those ingenious employees?

Mr. LEEDS: No.

2783 Mr. WARRINGTON: I want to ask you now as to one or two matters that came out in your cross-examination. I believe you said that in the Western Classification there are five classes in figures and five in numbers.

Mr. LEEDS: Yes, sir.

Mr. COLSTON: And lumber and salt.

Mr. LEEDS: There are ten independent of lumber and salt. That would make twelve.

Mr. WARRINGTON: Are lumber and salt carried in the classes that have either numerals or letters to designate them?

Mr. LEEDS: No; they are not. They are carried under the head of the article and not carried in all the tariffs I believe. I think that is in accordance with the convenience of the road using it, and my impression now is that there are only ten columns carried in the general tariff, though I am not positive on that. It would be unnecessary to carry more than to cover the classification.

Mr. WARRINGTON: How does the rate at which articles in Class A of the Western Classification compare with the fifth class rate in the same classification?

Mr. LEEDS: It is higher as a general rule; in the tariffs east of the Rocky Mountains I believe universally so.

2784 Mr. WARRINGTON: Then practically Class A of the Western Classification stands above fifth class?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: The result of that is to make Class 5 practically the sixth class?

Mr. LEEDS: In the gradation of figures; yes, sir.

Mr. WARRINGTON: Are you able to give me, for illustration, the figures or rates upon these classes, numerals and letters, between Chicago and Kansas City?

Mr. LEEDS: Yes, sir; I have a memorandum in my hand.

Mr. WARRINGTON: Just read them to the stenographer.

Mr. COLSTON: Is that for each class?

Mr. WARRINGTON: Yes, sir.

Mr. LEEDS: First class, 80.

Mr. WARRINGTON: Let us know what that 80 means.

Mr. LEEDS: I should have said 80 cents. First class, 80 cents; second, 65; third, 45; fourth, 32; fifth, 27; A, 32; B, 27; C, 22; D, 18½; E, 16 cents per hundred pounds.

Mr WARRINGTON: How long have those rates been constant?

Mr. LEEDS: From the first to Class A, inclusive, they have been in effect almost constantly I believe for a period as long as about ten years—anyhow that long. There have been some changes in
2785 the lettered classes; I think a half a cent in "A" at some period in the existence of these tariffs; but the changes have been slight and immaterial.

Mr. WARRINGTON: Now, take the prices or rates under classes B, C, D, and E of the Western Classification. State whether or not they include many of the articles which are below the sixth class of the Official Classification.

Mr. LEEDS: Yes; they naturally take the cheaper, coarser commodities.

Mr. WARRINGTON: Do they correspond in large measure with the commodity rates in the Official Classification?

Mr. LEEDS: I should say yes, sir. Most of those items are included in those classes.

Mr. WARRINGTON: What other reasons than those involved in the answers just given, if there be any, why the Western Classification and the Official Classification cannot be employed as analagous in the sense that you find soap say in the fifth class there and now in the fifth class here?

Mr. LEEDS: Generally speaking the Western rates are higher than the rates employed in the Official Classification territory. There is a wider-spread between the highest and lowest classes by four
2786 classes than there is in the Official.

Mr. WARRINGTON: That is, higher, or wider spread, in the Western than in the Official?

Mr. LEEDS: Wider spread in the Western. So that in a comparison of figures we would not be able to cover the same articles under the same class; and another feature is that there is no provision made in the Western Classification to any considerable extent for mixed carloads of the same class of business. There is a recognized difference there between the carload and less than carload rate which does not prevail under Rule 10 in the Official Classification.

Mr. WARRINGTON: To carry this illustration further, where is alum in the Western Classification?

Mr. LEEDS: They classify alum in the Western Classification in carloads, I believe, at fourth class.

Mr. WARRINGTON: Where rice?

Mr. LEEDS: That is fifth.

Mr. WARRINGTON: Out there?

Mr. LEEDS: Yes, sir; I think so.

Mr. WARRINGTON: And it not remains in the sixth class in the Official Classification?

Mr. LEEDS: Yes, sir.

2787 Mr. WARRINGTON: That is to say, after the elimination of the commodity articles, it is one of the 67 remaining in the sixth class in our Official Classification?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Take starch: In what class is it found in the Western Classification?

Mr. LEEDS: I believe it is fifth. I would like to refresh my memory on that; I am satisfied it is in the fifth class. (After consulting classification) Yes.

Mr. WARRINGTON: Take Coffee.

Mr. LEEDS: That is in the fifth class.

Mr. WARRINGTON: Fifth class carloads?

Mr. LEEDS: Yes, sir.

Mr. MATTHEWS: And what in less than carload lots?

Mr. LEEDS: I believe there is a correction in that if I am not mistaken.

Mr. WARRINGTON: Coffee is divided there into two classes or subdivisions, green and roasted.

Mr. LEEDS: I think by correction roasted coffee in carloads is placed back in fifth class.

Mr. WARRINGTON: Look and see if coffee, green, is not in the fifth class and coffee, roasted, in the fourth class.

2788 Mr. LEEDS: It has been placed back in the fifth class by correction of March 10, 1900.

Mr. WARRINGTON: What?

Mr. LEEDS: Roasted coffee.

Mr. WARRINGTON: So roasted and green are in the fifth class?

Mr. LEEDS: Yes, sir.

Mr. WARRINGTON: Now, take one other matter. As to this convenience and economy in the handling of articles, how is the handling of hogsheads or rice, compared in the economy and convenience with handling the same in barrels or boxes or bags?

Mr. LEEDS: So far as convenience is concerned, I presume the smaller package would handle more conveniently. Whether you would be able to load a car more quickly in one shape than another would be a question I could not answer.

Mr. WARRINGTON: Could you get as much in in hogsheads?

Mr. LEEDS: No.

Mr. WARRINGTON: Then tiering barrels; how does that compare in convenience with piling boxes and bags?

Mr. LEEDS: It would not be as convenient and there would be more liability to breakage of package?

Mr. WARRINGTON: As to barrels of oil, that is done by what is known as tiering, by the introduction of timbers.

2789 Mr. LEEDS: Yes, but that is not generally done in handling smaller and lighter packages.

Mr. WARRINGTON: With respect to Rule 10 you were asked whether that is used in any way in competition with the Procter & Gamble Company. I want to ask you this, whether Rule 10 does not let off those who were not competing with the Procter & Gamble Company for less than they ought to pay and so increase the amount

of the Procter & Gamble Company or any one manufacturer shipping in carloads beyond what they ought to pay? In other words, is not the effect of this Rule 10 to give an opportunity to people who are dealing in many articles to escape paying carload rates and get off with less sums *they* they ought to pay, and thereby increasing the manufacturers' rates above what they otherwise would pay?

Mr. COLSTON: We object to the argumentative form of this question.

Commissioner FIFER: I thought that had already been gone into.

Mr. COLSTON: It has been gone into.

Mr. WARRINGTON: I made a note of it in the course of the cross examination. The way it came up was this: Mr. Maxwell asked Mr. Leeds what effect it would have on a manufacturer who
2790 shipped only one article even if it were true that the rule permitted the man who dealt in various articles to get as good rates, provided they filled up a car, say, to 12,000 or 16,000 or 20,000 minimum carload quantities.

Commissioner FIFER: Let him answer.

Mr. LEEDS: It destroys the unit of carlot in the establishment of rates and permits the small shipper of less than carload quantities to obtain the same rate as is applied to the full carload shipment of the man who can only avail himself of the carload rate on a single article.

Mr. WARRINGTON: What is the effect of that upon the man dealing in a single article?

Mr. LEEDS: It would naturally be to allow the purchaser to avail himself of carrying a smaller stock of goods and obtaining the same figure on a smaller lot desired, the natural result of which would be to reduce the number of carload shipments or to throw the trade into the hands of the man who ships in smaller quantities in an aggregation of articles under Rule 10.

Mr. WARRINGTON: What is the effect of that upon the man who has only one article to ship?

Mr. LEEDS: It decreases the number of carloads that he can ship; in other words, it curtails his trade I should say.

2791 Mr. WARRINGTON: If then the Official Classification roads are carrying vast quantities of mixed carload lots at carload rates, and so reducing the cost of carriage of those classes, does not that result in the companies having to exact from those manufacturers who deal in only one article a larger revenue than they otherwise would?

Mr. COLSTON: We object to the question as argumentative, suggestive and leading.

Commissioner FIFER: Just ask him what effect that would have.

Mr. WARRINGTON: Supposing the effect of Rule 10 to be as you state, to increase the traffic in mixed carload lots at lower rates than they could otherwise be carried for, what effect, if any,

has that in making larger exactions than would otherwise be required of the manufacturers who have only one article to ship?

Mr. LEEDS: If it becomes a question of revenue, I would consider the position was inconsistent while Rule 10 remained; in other words, it in my mind is a discrimination against the carload shipper to exact the same price from him as from the man who ships in less than carload lots the same commodity, and if,

2792 as is stated by the other parties, it is a question of revenue, it is plain upon the face of it that that is the effect—that more has to be exacted on carload business while Rule 10 remains.

Mr. WARRINGTON: Suppose revenue to be the object of these railroad companies, so long as they keep Rule 10 in force and give the opportunities that it furnishes, is it or not true that it results in making greater exactions on the carload shipper of a single article than would be necessary if they did not have that rule?

Mr. LEEDS: That is apparent in the classification.

Mr. WARRINGTON: It has been suggested that the effect of Rule 10 would be the same whether soap is classified in Class 5 or Class 6 in carloads. Is that true?

Mr. LEEDS: No.

Mr. WARRINGTON: Why?

Mr. LEEDS: At least if we are to take the classification as it existed before No. 20 as a basis upon which to make that statement.

Mr. WARRINGTON: Go ahead.

Mr. LEEDS: The facility for mixing under Rule 10 would not be as good with the commodities divided between fifth and

2793 sixth class as if all were in the same class. For example, take a sixth class article and combine it under Rule 10 with articles in the fifth class; then the whole would take the fifth class rate, and it would leave a margin between a single carload of sixth class freight of the difference between fifth and sixth class.

Mr. WARRINGTON: In other words, if I understand you, so long as soap is classed in fifth class it enables the jobber to group that with other fifth class articles and get carload rates, which he could not do if soap was in sixth class?

Mr. LEEDS: If he did, he would be obliged to pay the fifth class rate on a sixth class article if it was in the sixth class schedule.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: You testified that you heard that certain lighterage charges were allowed to shippers of sugar, in New York. Did you hear that those allowances were made on shipments over some particular lines or over all lines?

Mr. LEEDS: The agreement as it was stated to me was that that arrangement was under the supervision of the then Trunk Line Association and that that business was to be divided between all of the lines according to the judgment or caprice of the association and routed according to their pleasure.

2794 Mr. WARRINGTON: Was your line included in that Trunk Line Association?

Mr. LEEDS: No, sir.

Mr. MAXWELL: Why is more charged for less than carload shipments than for carload shipments?

Mr. LEEDS: There are a good many reasons for that. In regard to less than carloads shipments the carrier as a general rule handles the business as to both the loading and unloading. It is warehouse freight, what may be termed depot warehouse freight—I guess you understand what I mean—and it is not so readily or quickly disposed of at the point of destination; and there are reasons other than that. In loading a variety of articles in the same car, there is more liability to damage; that is, one article to another, and the difference in package would naturally allow of a less quantity per car than would be loaded in straight carloads of freight.

Mr. MAXWELL: Is the principle of charging more for less than carload lots than for carload lots one of general application?

Mr. LEEDS: Yes, so far as my experience extends. It has been in use for a good many years. There was a time that my recollection goes back when the Trunk Lines on westbound business
2795 made no distinction.

Mr. MAXWELL: That was some time ago?

Mr. LEEDS: Yes, sir; that was some time ago.

Mr. MAXWELL: In less than carload lots are the cars on the roads in Central Territory generally completely filled, or do they go with a small proportion of car space filled?

Mr. LEEDS: If you refer to local freight—well, I cannot answer definitely as to Central Traffic Territory, but I think you will find it in almost any report on the subject by any road that what they call local freight or less than carload business handled by local freight trains loads very much lighter and has a tendency to bring down the average of the entire per car tonnage of the roads somewhat.

Mr. MAXWELL: Take for instance the Cincinnati, Hamilton & Dayton Railroad between Cincinnati and Toledo; do you know to what extent their less than carload business would fill their cars?

Mr. LEEDS: No; it would be obvious, however, that they would not load as heavy as single commodities.

Mr. MAXWELL: Do the railroads make any more on less than carload lots than they do on carload lots?

2796 Mr. LEEDS: Do you refer to per ton?

Mr. MAXWELL: The net revenue.

Mr. LEEDS: I do not understand your question.

Mr. MAXWELL: I want to know whether the difference between the carload rates and the less than carload rates—that is, the extra charge that is demanded for less than carload freights—does anything more than make up the difference in the cost of handling and the less quantity that goes in a car, and so?

Mr. LEEDS: That occurs to me would be a question of bookkeeping, as to what items were charged up to expense.

Mr. MAXWELL: What I want to know is this, as the result of your observation: suppose all business was in less than carload lots, would the railroads make any more than they would if the business was all in carload lots?

Mr. LEEDS: There would be an addition in the handling expense if they handled it themselves.

Mr. MAXWELL: And there would be an additional empty car space, would there not?

Mr. LEEDS: Yes; naturally so if they were to ship all in mixed carloads; it would have that tendency; yes, sir.

2797 Mr. MAXWELL: Taking the business as actually performed on the railroads; do the railroads get any more revenue out of the less than carload rates than they do on the carload rates on the same articles?

Mr. LEEDS: From my analysis of the classification, I think you get less on your less than carload business, or on your high-class freight than you do on your low-class freight, per car I mean.

Mr. MAXWELL: That is, net revenue?

Mr. LEEDS: You get less gross revenue, and I presume with the additional expense that your net revenue per car would be correspondingly less. Take your light articles that you handle in carloads. That is a good example of what you are trying to get at.

Mr. MAXWELL: Which is the more profitable business for the railroads—the carload lots or less than carload lots?

Mr. LEEDS: That would depend on the location to some extent, but upon your adjustment of figures my judgment is that you make more money on your carload business.

Mr. MAXWELL: Than on less than carload business?

Mr. LEEDS: Yes, sir.

2798 Mr. MAXWELL: Is that a general rule, do you think?

Mr. LEEDS: I have some doubt about that where the less than carload rate would be held very high. I have in mind some of the Rocky Mountain district. I have not figured it out or analyzed it, but I think there might be a question there as to that.

Mr. MAXWELL: That is all.

Mr. WARRINGTON: Do you mean straight carloads when you speak of carloads in your last answer or two?

Mr. LEEDS: All the answers I have given on this cross-examination would lead to that inference; yes sir.

Mr. WARRINGTON: That is all.

Commissioner FIFER: You may be excused, Mr. Leeds.

Mr. WARRINGTON: I will ask that Mr. Wilson be sworn.

2799 E. P. WILSON, a witness called on behalf of complainant, being duly sworn, testified as follows:

Mr. WARRINGTON: Mr. Wilson, where do you reside?

Mr. WILSON: On the Ohio River, twelve miles west of Cincinnati.

Mr. WARRINGTON: Where is your business home?

Mr. WILSON: In Cincinnati.

Mr. WARRINGTON: How long has that been so?

Mr. WILSON: Since 1890, and before that about fifteen years prior to 1884.

Mr. WARRINGTON: Where were you in the interval between 1884 and 1890?

Mr. WILSON: In Chicago.

Mr. WARRINGTON: What railroad experience have you had?

Mr. WILSON: I commenced work on the railroads in 1863 at a country station up in Pennsylvania, and went from there during the same year to Louisville and took service with the freight department of the Louisville & Nashville Railroad, where I was em-
2800 ployed in several capacities in connection with the freight department until 1869. At the time I was with the Louisville & Nashivlle Railroad, during the latter part of the Civil War, I was engaged primarily on the platform in loading and handling the shipments of freight, which principally during the war were made by the United States Government; afterwards in the office in billing, collecting and fixing charges on that business, and as the war closed and the commerce of the country revived the Louisville & Nashivlle Railroad Company's business became more heavy in all classes of commerce, and the exigencies of the business threw me in contact with practically the reconstruction of the entire freight commerce between the sections north of the Ohio River and the section south of the Ohio River that had been involved in the war. In that time, between 1863 and 1869, business was practically resumed between those sections, and it had to be rebuilt and reconstructed as to tariff rates and classifications, made *de novo;* and in that time I was associated in the Freight Department under Albert Fink, who was General Superintendent and Mr. Van Alstine, who was General Freight Agent. I was part of the time his assistant and part of the time Chief Clerk. Mr. M. H. Smith, who
2801 is now President of that road, was connected with the Freight Department at that time, and I may say that we four men had as much to do with the resumption of that trade and building up the classifications and tariffs between the North and South as any four men in the United States. During that time of course we came in contact with the managers of the Freight Departments of the Trunk Lines and other roads north of the river, and the framing of tariffs, the forming of through tariffs and classifications, was a matter of constant study and conference; and it so happened that I was drawn into that work from the beginning and continued in it, preparing tariffs and consulting with others in the preparation of tariffs and classifications, through and local, until 1869, at which time I was appointed General Freight Agent of the Louisville, Cincinnati & Lexington Railroad, which had just finished its branch called the Louisville Short Line, between Louisville & Cincinnati, that being under the presidency of Hon. Wm. A. Dudley, and Samuel Gill was General Superintendent, both of whom are now dead. The road had to be organized and brought in contact with the systems of railroad north and
2802 south of the river, and it was what might be called the umbilical cord between those two systems and was practically the first all-rail connection via Cincinnati between the North and South. That of course gave me considerable work to do in connection with tariffs and classifications and threw me into contact with the

men in this country who really did the work, Traffic Managers and Presidents and men of that class.

Mr. WARRINGTON: How long were you in that position?

Mr. WILSON: Until 1873.

Mr. WARRINGTON: How, if at all, did that bring you in contact with classification matters?

Mr. WILSON: The classification of the Louisville & Nashville Railroad when I first went there consisted of three classes and not over 150 articles all told enumerated in them. That had to be, naturally, expanded by the incorporation and arrangement in classes of the various kinds of traffic and merchandise which were presented to the road for transportation after the war closed, and it naturally grew to embrace a great many articles that were not in it originally. The first classification I remember seeing in the Louisville & Nashville office had been made by the Board of Directors and
2803 embraced a very few articles, and under the work of the gentlemen I have mentioned it grew much larger and in the transaction of business the application of classifications became a more practical question, because every railroad in those days had its own classification. The effort to reconcile those classifications commenced very early in the period I refer to and has been going on, I might say, in an evolutionary manner ever since. I presume it will be a matter of evolution as long as railroads transport busines, because the things offered for transportation are constantly increasing and constantly changing in form. Therefore I have had opportunity to mark the growth of classification in this country and the methods of its evolution.

Mr. WARRINGTON: Where did you go after you left the Louisville Short Line?

Mr. WILSON: I was appointed General Freight and Passenger Agent of the Cairo & Vincennes road. It was an independent road that Gen. Burnsides built. I was with them six or seven months. I got tired of Cairo, and I was then appointed General Freight and Passenger Agent of the Louisville, Paducah & Southwestern road.

2804 Mr. WARRINGTON: How long did you stay there?

Mr. WILSON: I came from there to be Superintendent and General Freight & Passenger Agent of the Cincinnati Southern when that road opened.

Mr. WARRINGTON: How long were you there?

Mr. WILSON: Until 1884.

Mr. WARRINGTON: And what other opportunities did you have in these other positions for becoming familiar with freight classification?

Mr. WILSON: I had the same general class of business contact with our connections at both ends and charge of making tariffs and classifications for the local business for both those roads. They were both new roads and the business pioneer business and I had in connection with my superior officers direct charge of the Freight Departments of those roads.

Mr. WARRINGTON: Did that require you to classify for your own purpose—the purposes of your road?

Mr. WILSON: For the purposes of the road I was connected with I also to be familiar with the numerous classifications of other ds with whom it was necessary to establish and maintain business relations.

95 Mr. WARRINGTON: How did you come in contact with the classification north of the Ohio River?

Mr. WILSON: Beginning with the close of the war, the only out- for business from North of the river to the South was over the iisville & Nashville Railroad and its connections south, and there s a very considerable business built up from New York and the erior north of the river in commodities consumed in the South be shipped to all the various local points south of the river, and had a good deal of trouble to get things straight, having one ssification north of the river and a classification of our own and ssifications of every road with which we connected. So in the be- nning it was rather a complicated business.

Mr. WARRINGTON: How did that enable you to learn the classifi- ion north of the river?

Mr. WILSON: It brought me in daily contact with it. I do not y I learned it, but I was as familiar with it as the nature of my siness required.

Mr. WARRINGTON: Did you or not meet with the classification en north of the Ohio River?

Mr. WILSON: I met with them very frequently in an effort 806 to reconcile our classifications and to establish a systematic basis of through service.

Mr. WARRINGTON: Did you have conferences with them?

Mr. WILSON: Yes, sir.

Mr. WARRINGTON: Touching classification?

Mr. WILSON: Yes, sir.

Mr. WARRINGTON: Where do you go after you quit the Cincinnati outhern?

Mr. WILSON: I was appointed arbitrator for an association called he Chicago, St. Louis and Missouri River Association. It embraced ll the roads between Chicago and St. Louis and the Missouri River, nd for a time I was employed as arbitrator.

Mr. WARRINGTON: What were your duties, in a general way?

Mr. WILSON: Strictly confined to questions connected with the assenger business of those roads.

Mr. WARRINGTON: Where did you go then?

Mr. MAXWELL: When was this?

Mr. WILSON: From 1884. I think I was connected with two as- ociations there during a period of about a year and a half. I am not uite certain as to the dates, but the Chicago, St. Louis and Missouri River Association gave way to what was called the Western 2807 Passenger Association, and I was Commissioner of that for probably two or three months. Then I was appointed Gen- ral Passenger Agent of the Chicago & North-Western Railway.

Mr. WARRINGTON: When was it you were in conference with the orth and south railroad men?

Mr. WILSON: During the period I was with the Louisville, Cin- cinnati & Lexington, the Short Line, those conferences commenced.

Mr. WARRINGTON: What had they to do, if anything, with classification?

Mr. WILSON: They were endeavoring to construct a classification that could be used in common east and west and also to reconcile as far as possible their classification with the classifications south of the river in order to afford a basis for interchange between business north and south.

Mr. WARRINGTON: Did you participate in those conferences, discussions and actions?

Mr. WILSON: I did. I think the last contact I had with that was at Toledo in about 1875.

Mr. WARRINGTON: Were you ever a member of a committee on rates and classification of any association?

2808 Mr. WILSON: Yes, sir; I was a member of the committee that had charge of the rate business of the Southern Railway & Steamship Association.

Mr. WARRINGTON: For how long?

Mr. WILSON: During the time I was connected with the Cincinnati Southern.

Mr. WARRINGTON: What had that to do with classification?

Mr. WILSON: There was a classification adopted by that association known as the Southern Railway & Steamship Classification, and at our rate meetings, which occurred at regular intervals, the question of classification usually came up in some form.

Mr. WARRINGTON: What did you take up after quitting the arbitration that you mentioned a few minutes ago?

Mr. WILSON: I went into the passenger business as General Passenger Agent of the Chicago & North-Western road.

Mr. WARRINGTON: You were there how long?

Mr. WILSON: Up to 1890.

Mr. MAXWELL: From what date?

Mr. WILSON: I was there between three and a half and four years.

2809 Mr. WARRINGTON: Where did you go then?

Mr. WILSON: I returned to Cincinnati.

Mr. WARRINGTON: What did you do then?

Mr. WILSON: I became associated as Commissioner with what was called the Cincinnati Freight Bureau.

Mr. WARRINGTON: What was that?

Mr. WILSON: That was a society or organization composed of members of the Chamber of Commerce of Cincinnati, merchants and manufacturers. It was organized under the belief that a common ground might be found between the railroads and the shippers in the settlement of a great many mooted questions and disagreements and differences if they had an adviser or commissioner who was familiar with the business of the railroads as well as somewhat familiar with the business of shippers; and upon that theory I accepted service with them in 1890, the 1st day of July, and have been practically in that relation under various titles, but with other connections with other business, ever since. I have taken on some other duties and other connections, but that relation between myself

and the shippers and the railways of Cincinnati exists in form to-day.

Mr. WARRINGTON: I believe you are Secretary of the Manufacturers' Association of the United States at present?

2810 Mr. WILSON: Yes, sir.

Mr. WARRINGTON: And what has that to do with railroads, if anything?

Mr. WILSON: The Association numbers or embraces about one thousand or more firms, or principal manufacturers of the United States and they are all shippers, and considers such questions as are connected with transportation that might arise between shippers and carriers. The principal duty that has been assigned to me by that Association in connection with transportation has been to forward, foster or promote as best I could the idea of a uniform classification. In other words, in addition to my secretaryship I am Chairman of the Committee on Transportation, and the only definite instructions I have from the Association are to promote the establishment of a uniform classification.

Mr. WARRINGTON: A National uniform classification?

Mr. WILSON: The plan was so designated, as a National freight classification.

Mr. WARRINGTON: Well, now, if there is any position you have omitted to state, any position which you have occupied and which brought you into connection with classifying freight rates,

2811 I would be glad for you to mention it.

Mr. WILSON: I think I have covered the ground.

Mr. COLSTON: I would like to ask an adjournment at this point, if Mr. Warrington has finished his preliminary examination.

Commissioner FIFER: Is that agreeable, Mr. Warrington?

Mr. WARRINGTON: Yes, sir.

Commissioner FIFER: We will meet again at 2:15.

At 12:45 a recess was taken.

2812 After Recess.

SEPTEMBER 28, 1900—2:15 p. m.

Commissioner FIFER: Gentlemen, you may proceed.

Mr. WILSON resumed the stand.

Mr. WARRINGTON: What, if any, examination have you made of schedule 20, Official Classification?

Mr. WILSON: I have given it a fairly close examination on several occasions since it was issued.

Mr. WARRINGTON: I will ask you whether you did so prior to the commencement of this suit?

Mr. WILSON: I don't know when this suit commenced.

Mr. WARRINGTON: Well, assuming that it was commenced after the classification went into effect?

Mr. WILSON: I made an examination of the classification prior to

its going into effect from some documents and information that were secured in advance.

Mr. WARRINGTON: Were you interested in it in the official position you occupy or otherwise prior to the commencement of the Procter & Gamble suit?

Mr. WILSON: Yes, sir.

2813 Mr. WARRINGTON: Did you attend any meetings or sessions of the Interstate Commerce Commission in December, 1899, when the Commission held sessions to hear from different interests of the country?

Mr. WILSON: I was present at that meeting.

Mr. WARRINGTON: That was before the Classification was to go into operation, I believe.

Mr. WILSON: That is my recollection.

Mr. WARRINGTON: Now, recently, comparatively, have you made a special examination?

Mr. WILSON: I have looked over a number of statements that were prepared and submitted yesterday in the testimony of Col. Leeds.

Mr. WARRINGTON: Did you do that at the instance and request of the Procter & Gamble Co.?

Mr. WILSON: Yes, sir.

Mr. WARRINGTON: Have you considered what articles of the sixth class of schedule 20 are related to soap as freight articles?

Mr. WILSON: I have given that matter a good deal of thought and consideration, and, without making any attempt at ex-

2814 hausting the subject, I believe the statement filed is a fair categorical statement of such articles.

Mr. MATTHEWS: Exhibit A?

Mr. WARRINGTON: No, sir, not Exhibit A. It is a list given by Colonel Leeds beginning with "Alum" and ending with "Zinc, Sheet," is it not?

Mr. WILSON: Yes, sir. I have seen that statement.

Mr. MATTHEWS: You heard Mr. Leed's testimony, did you?

Mr. WILSON: Yes, sir .

Mr. WARRINGTON: Did you examine that and consider it with Colonel Leeds?

Mr. WILSON: I am not prepared to say that we considered it together beyond the fact that we were in the same room with it on several occasions. It passed under my thought several times, but I do not remember distinctly that Colonel Leeds and I discussed it together.

Mr. WARRINGTON: What now is your judgment as to the relativity between those articles and soap as freight articles?

Mr. WILSON: They bear fair relation. Soap would be, to my mind a preferable article of freight to secure, to control and develop to any of them, I might say except grindstones. I believe

2815 I would just as lief carry grindstones as soap if I could get enough of them.

Mr. WARRINGTON: But the bulk or tonnage of grindstones is not as large as that of soap?

Mr. WILSON: No, sir; grindstones last longer than soap in a family.

Mr. WARRINGTON: Can you state what of these articles bearing relativity to soap in the sense I have stated have been carried into the commodity lists?

Mr. WILSON: I can only base that statement on the information, which I believe to be correct, conveyed by the list filed by Mr. Leeds. I did not make a personal examination of the commodity list. If I might be permitted to say it, I very seldom charge my memory with anything that is a matter of official record. Records are always in my reach. I am not able to answer you in detail.

Mr. WARRINGTON: That is a matter that can be ascertained by reference to the records?

Mr. WILSON: All those things impress me as being matters of official record and hardly possible for a man to carry in his mind.

2816 Mr. WARRINGTON: Do you know what articles of the sixth class bear commodity rates?

Mr. WILSON: From the source I quoted I know.

Mr. WARRINGTON: Are they those stated in Exhibit "A"?

Mr. WILSON: Let me see it. (After examining.) To the best of my knowledge and belief this statement contains the facts it purports to show.

Mr. WARRINGTON: Mr. Wilson, from your experience, state whether or not paving stones, brick, lime, and sand are carried in any of the classified rates?

Mr. WILSON: I have never known them to be so carried except in less than carload quantities.

Mr. WARRINGTON: Take them in carload quantities: How have they been carried with respect to rates?

Mr. WILSON: Generally as special rates, or, as under late practice, as commodity rates. I want to say that the term "commodity" rates was a recent introduction into the tariff. We always called them special rates.

Mr. WARRINGTON: It means the same thing as the old special rate?

Mr. WILSON: Yes, sir; it was always necessary to make special rates for those heavy articles or special classes.

2817 Mr. WARRINGTON: Take crude articles in the rough and unfinished state: where have they generally been carried?

Mr. WILSON: Under special provisions.

Mr. WARRINGTON: Take articles partly manufactured: where have they been carried? Of course I am speaking with reference to the classification?

Mr. WILSON: I am speaking generally, that special provisions would be made for articles in process of manufacture or partly manufactured when shipped in carloads.

Mr. WARRINGTON: Now, why is it that these articles I have gone over and which you stated found their way into the commodity rates—why is it that they are carried in that way?

Mr. WILSON: Well, I should say that every transaction stood on

its own bottom at some time or other in determining what class or arrangement should be made to carry special property. Quite a variety of considerations enter into determining that question.

Mr. WARRINGTON: Is or is not one of the reasons, that they will not move at the classified rates?

Mr. WILSON: That is generally a primary reason.

Mr. WARRINGTON: What reason is there, or can there be, for putting such articles in a class at all?

2818 Mr. WILSON: In making up a classification it is generally considered advisable to have it embrace as nearly as possible everything that could be suggested to be carried, and in the absence of a special rate they might occasionally realize the full class rate; at all events, the billing clerks would have something to guide them in the absence of special instructions.

Mr. WARRINGTON: In determining relativity of articles of a class, is it usual to refer to those articles which are in a class nominally, but only to be carried under commodity rates, or do you consider those which are constantly kept and carried in the class?

Mr. WILSON: The statement that those articles are in the sixth class is scarcely a candid statement as between transportation men. It might carry a different meaning to people less familiar with the business; but the statement that the sixth class embraces such articles as sand and brick and crude articles is scarcely a candid statement.

Mr. WARRINGTON: Well, among freight traffic men would it be usual to speak of soap, say, or starch as not belonging to a particular class because they are not analogous to paving stone or sand or brick or lime, seeing that those things really do not belong there?

2819 Mr. COLSTON: What was that question?

The question was repeated by the stenographer.

Mr. WILSON: No; I do not think it would be usual.

Mr. WARRINGTON: In your investigation have you had occasion to ascertain what number of articles are actually in the sixth class after eliminating the commodity articles?

Mr. WILSON: As I stated before, I accept that information as true which was prepared by parties that I consider reliable, and, with that qualification, to the best of my knowledge and belief I would state that the list submitted states the facts.

Mr. WARRINGTON: That, again, is a subject which can be determined by record evidence in the Interstate Commerce Commission archives?

Mr. WILSON: That is my belief, sir; that all this matter is a subject of official record; and I have never deemed it necessary to charge my memory with the categorical statements.

Mr. WARRINGTON: Have you thought of the articles so remaining in the sixth class to wit the 67, or thereabouts, as related to soap as freight articles? If so, you may state what they are.

Mr. WILSON: I have examined this list repeatedly.

2820 Mr. MAXWELL: What is that?

Mr. WILSON: Exhibit "F;" I have examined this paper repeatedly and given the matter a good deal of thought. I am

unable to say that there is any article on that list that would be as desirable a freight to carry or develop the carriage of as soap. There are a great many articles enumerated in this list that I know must be of limited movement and applied within a limited district to special uses with the exception of rice and probably alum. I do not think alum from my observation, could ever reach in tonnage, and general movement, soap. Rice as an article of domestic consumption would hardly equal it in tonnage, and, as I said, grindstones are not consumed rapidly enough to rival it. Then there are a number of articles enumerated here which I have investigated, and I fail to find any evidence within the scope of my investigation of their being carried in carloads at sixth class to any appreciable extent. I took the trouble to write to a number of manufacturers who make furniture and wagons and buggies in this town to ascertain if bed slats chair stuff, furniture stock or stuff in the rough, table stuff in the rough, hame sticks, etc. were moved in carloads to any
2821 extent and, if so, whether they paid full sixth class on them, and I have received a limited number of answers to those letters. In each case the parties disclaim handling the stuff at all in carloads, and they are among the leading manufacturers of those lines of trade in this town. From that information I feel justified in saying that there are a number of articles that rank here that do not amount to any great sum as freight in this territory.

Mr. WARRINGTON: I scarcely need repeat that the articles you have just alluded to are of those remaining in the sixth class.

Mr. WILSON: They appear in that statement, and I believe that is a correct statement of the facts.

Mr. WARRINGTON: Have you looked into the changes which were made by the adoption of schedule 20 enough to tell us what articles of the sixth class under schedule 19 were moved up to fifth class under schedule 20?

Mr. WILSON: Enough to express the same opinion of the statement that has been rendered that I did in regard to the other—that to the best of my knowledge and belief it is a correct statement of the facts all susceptible of verification in the records of the railways or the Interstate Commerce Commission.

2822 Mr. WARRINGTON: Do you refer to Exhibit "G" as what you believe to represent the changes so made?

Mr. WILSON: That is the paper I refer to.

Mr. WARRINGTON: Do you know, or have you looked into it to see, what articles of the fifth class, schedule 20, bear commodity rates?

Mr. WILSON: In the same way that I referred to this paper. I examined Exhibit "H," I believe it was. I can tell you if I see it. (After examining) I have seen this paper before.

Mr. WARRINGTON: Exhibit "H"?

Mr. WILSON: Marked Exhibit "H," and from such examination as I have been able to give the subject I believe that correctly states the facts and is subject to verification in the records of the Interstate Commerce Commission.

Mr. WARRINGTON: What have you to say of sugar and coffee

under the present commercial and market conditions of our country in comparison with the competitive soaps of the country as freight articles? When I say present conditions I allude to conditions which prevailed January 1st, 1900.

Mr. COLSTON: I would like to have that question repeated.

The question was repeated by the stenographer.

Mr. WARRINGTON: What I want is that you tell us about sugar and coffee in connection with soap—as freight articles in com-
2823 parison with soap.

Mr. WILSON: Sugar and coffee have always been regarded as staple articles for cheap transportation, but compared with soap as desirable articles for transportation and a medium for building up the business of transportation by a freight company, I should consider that neither of them possessed the characterictics that would make them as desirable as soap. Sugar and coffee are questionable necessities. A great many people can get along without them, but it would be to my mind cruelty to deprive anyone of the use of soap. I believe that its movement should be developed for social and economic reasons as well as from the nature of the article itself. It springs up almost as spontaneously as any agricultural product throughout this whole country. Its production is probably possible at every point and more widely distributed than any particular commodity, and particularly is that the case in comparison with sugar and coffee. Sugar and coffee are both practically, or to a large extent, brought into this country and placed in condition for consumption by processes that are quite as complicated as the process of producing soap, and they do not compete with themselves. I want to say right here that classification is largely a matter of judg-
2824 ment of men rather than a matter of law, and I am only giving the best judgment I can give to it.

Mr. WARRINGTON: Mr. Wilson, comparing the commercial conditions, if anybody knows what that phrase means, which affected sugar and coffee in 1890 and 1891 with those which affected those articles at the beginning of this year and the present, has there been any change, and if so, what change has taken place with reference to the production and control of those two commodities?

Mr. WILSON: I do not know any more about those commercial conditions in the periods mentioned than I have derived from general literature and general information, and with that qualification I will say that the control, I believe, of the movement, sale and distribution of those articles has undergone very radical change in that time, if that is what you refer to.

Mr. WARRINGTON: Has that change increased or diminished the controlling agencies of sugar and coffee?

Mr. WILSON: It has contracted the area of the control of shipments.

Mr. WARRINGTON: Now, does this contraction of the area
2825 of control, as you describe it, affect the question of comparison between sugar and coffee on the one hand and soap on the other?

Mr. WILSON: It affects it, I believe, to this extent: that the few

parties who control the shipment of these staples, having large tonnage at their command are able to work upon the spirit of competition between the carriers and to secure for the movement of their commodities lower rates than might otherwise be accorded to them if they were considered free from that element of competition.

Mr. WARRINGTON: When you consider the question of what an article will bear, is it or not easier for the controllers of an article whose control goes to the extent of making prices virtually to suit themselves for them to meet an increase in freight rates than for those persons who are producing an article that is competitive and competitive throughout the country and controlled by as many agencies as you know soap to be; in other words, under such conditions cannot sugar and coffee bear an increase better than the competitive soaps?

Mr. WILSON: I understand you to mean that the increased price can be secured more easily than the other?

Mr. WARRINGTON: Yes, sir.

2826 Mr. WILSON: Yes, sir; they can as a matter of course.

Mr. WARRINGTON: If, then, what the article will bear is a part of the modern railroad political economy is to be considered, those articles which are virtually monopolized can bear it better than those articles which are not? Is that right?

Mr. WILSON: I never thought of it particularly in that light. I believe it is true as an economic proposition. I never liked that expression "what the traffic will bear."

Mr. WARRINGTON: Mr. Wilson, have you examined Rule 10 of Schedule 20?

Mr. WILSON: Yes, sir.

Mr. WARRINGTON: Taking that rule and assuming that it was adopted and is preserved for an object, what in your judgment is its necessary effect upon Class 5?

Mr. WILSON: It increases the number of articles that will be carried at Class 5 instead of the nominal less than carload rates. In other words, it defeats the practical effect of the less than carload rate which is published and renders it possible for certain classes of shippers to move their commodities at fifth class rates in less than

2827 carload lots. The tariff assuming to declare that these articles classed at fifth class in carloads shall pay 20 per cent. less than third is a misleading tariff. It enables certain classes of shippers to move those articles at fifth class, whereas other classes of shippers the nature of whose business does not admit of making up mixed carloads would have to pay for distribution in carloads for their products 20 per cent. less than third. In that respect it strikes me as one of the clearest acts of discrimination in practice that exists as between classes of shippers. It impresses me very strongly as cutting very closely to a violation of the Interstate Commerce Law.

Mr. WARRINGTON: What class of shippers is affected the worst by the application of this Rule 10?

Mr. WILSON: The manufacturer of a specialty who is undertaking to distribute that specialty, a specific commodity, in less than carloads direct to his customers will find it possible to be cut under

by competitors who ship mixed carloads. Take for illustration a wholesale grocer in this town. He could make up a shipment of mixed carload to Columbus and put in Werk's Soap if he chose to carry it in preference to Procter & Gamble's, and ship it in
2828 fifth class, whereas Procter & Gamble selling to the same customer in Columbus would have to pay 20 per cent. less than third class, and there would be a practical discrimination in favor of this wholesale grocer who was competing with their factory. You can change the illustration; you can say he would handle Procter & Gamble's soap cheaper than Werks. It places it in the power of middlemen to cut prices on the manufacturer who undertakes to distribute directly.

Mr. WARRINGTON: What, if any, effect additional to what you have thus described has the fixing of minimum carload quantities upon the shipper? I allude to the minimum carload quantities of this schedule 20.

Mr. WILSON: You refer to the fact that the carload of a higher class on the minimum rate between the same points would yield a less aggregate revenue than the carload of lower class at its minimum?

Mr. WARRINGTON: That is one of them. You may state that and I will come to the other I had in mind in a moment.

Mr. WILSON: I have examined the Exhibit which Mr. Leeds filed, which compares the results of this classification in connection with minimum carloads, and it appears to me as bearing very un-
2829 equally upon different classes of shippers, as well as being unfair to the railroads themselves, and it exhibits to my mind a rather unskilful adjustment of results. What a tariff maker is supposed to be after is the best results for his company, and it seems to me a very poor commercial policy to carry a carload of furniture, for example, which may be worth anywhere from $1,000 to $2,000, highly susceptible to damage in case of partial or total destruction, and accept for that service, which is practically the same service, less than they charge for the transportation of a carload of soap, which would have to be burned up to be destroyed and would not be worth $1,000.

Mr. MAXWELL: How much is this furniture supposed to be worth?

Mr. WILSON: I said from one to two thousand dollars. A carload of church furniture, for example, might run from $2,000 to $3,000.

Mr. WARRINGTON: Is or is not the pursuit of such a policy calculated to cause loss or less than compensatory figures in a comparative sense on the higher class of freight, only to be compelled to make it up by the other process upon the lower-class freight?

2830 Mr. WILSON: That is a possible result.

Mr. WARRINGTON: Is it not a necessary result?

Mr. WILSON: I can hardly demonstrate that it is dependent upon accident or mishap.

Mr. WARRINGTON: If you carry—using your illustration—the higher class articles for less money or, say, carry it too cheap, where are you going to make up that revenue except by putting it, as this does, upon the lower class articles?

Mr. WILSON: Either lose it or make it up from some other source.

Mr. WARRINGTON: Is there any other source except to make it up on this lower class?

Mr. WILSON: It might be made up by advancing the minimum on this higher class, but it is fair to presume that they put it as high as the traffic will bear.

Mr. WARRINGTON: I am considering now the practical operation of schedule 20,—not what they might do by changes, but by carrying this schedule into operation. If they carry the higher class freight in the way you have described, is or is not the result inevitable either that they carry that too low or that they carry the lower class freight at a price too high?

2831 Mr. WILSON: I am clearly of the opinion that there is a disproportion in the result as to carrying soap which is unfair to the consumers and producers of soap as compared with the carying of woodenware or all the vari-ties of cooperage;—and these I understand are only a few of the examples,—or furniture, or burial cases and cabinets, and all of the electric supply matter, bulbs, carboys, and demijohns, lamp founts, etc. A carload can be made up and moved of them for $66.00, whereas a carload of soap would pay $90.00. It seems to me that there is no logic in it.

Mr. WARRINGTON: In view of the facts that you have just stated, what other reasons than those already stated are there in your judgment against this classification so far as it takes soap out of the sixth class and puts it into the fifth class in carload lots?

Mr. WILSON: From my observation, in arranging a tariff to produce revenue for a railroad company there are a number of considerations that enter into the formation of a correct judgment as to what should be done, and after all it is a matter of judgment, as I said before. I think that the advance of soap violates a num-

2832 ber of the conditions that I have learned from study and the experience of others to believe should be fairly considered in adjusting prices for transportation service. In the first place, the stability of a rate is liable to stimulate an increase in that particular traffic, and the disturbance of a rate without a very good and sufficient reason is to be avoided both from considerations of expediency and equity. The expediency of changing soap from a lower to a higher class affects both the carrier and the shipper and the consumer unfairly. It may reduce the revenue of the carrier and may disturb the relations of the producer with the consumer or subject the consumer to an undue advance in price. There are a number of considerations that I have thought ought to be fairly in mind in framing a classification, and in looking this matter over I do not believe that this change in soap respects them particularly.

Mr. WARRINGTON: You may state them if you will.

Mr. WILSON: Well, this is an arbitrary arrangement of mine and I have never shown it to any one. First, I would consider the form in which the shipment presents itself. Soap is shipped in

2833 a very convenient form and is susceptible of being loaded to the full capacity of any car that may be used for its transportation. Soap in its manufacture or production ranks with the cheapest form of agricultural products. It is a combination of very cheap

chemical elements with the atmosphere and with water and it is used in every civilized household in the country. It is an absolute necessity for the preservation of our civilization. Its value is less than that of the articles with which they have sought to class it. Its density per cubic foot I referred to in the possibility of loading. The risk attending its transportation is a minimum risk. It does not receive damage readily from external sources. It does not inflict damage upon other articles with which it is transported; and short of fire or submerging in water it is not liable to total destruction in case of wreck. Hence, it is a very desirable commodity to carry for that reason. The area of its production I think I stated is universal in this country, the possible area, and its area of consumption is equal to its area of production; the volume of production and consumption is very little short of the prime necessities of life. Hence, the
2834 possible movement of it—the possibility of stimulating its movement under favorable conditions is as great as that of any of the secondary cereal products at least, barring possible common flour. In its commercial reflex influence upon economics it creates employment, gives double hauls, and is the inevitable creator of other business, both for the transportation lines and in the community in which it is made. It affords a very large opportunity for the creation of new business to any carrier on whose line it is made. Its production is stimulative of general business. It stimulates the movement of raw material and of fuel; and if it were ranked, by the exercise of simple sound judgment and discretion without any ulterior motive, it seems to me that it would naturally take rank with the cheapest of by-products of cereals. Hence, I have no hesitation in saying that I do not see any sound transportation reasons for advancing the rate on soap.

Mr. WARRINGTON: I take it that you mean classification, although I will ask you as to advancement in classification, if that results in increase of rates.

Mr. WILSON: Advance in classification accomplishes an in-
2835 crease in rates, and the greater includes the less. Any process that has the effect of increasing the cost of transportation is embraced in what I said.

Mr. WARRINGTON: Mr. Wilson, have you thought any of the effect upon what is known as Central Territory in comparison with the effect on the Eastern portion and the far Western portion of the country under this rule of 20 per cent. below third class rates for less than carload lots?

Mr. WILSON: Well, my thoughts have been directed to that phase of the subject by information that came under my observation—that the effect of this compromise was to leave an advanced rate of freight in the Central Territory and to restore rates from New York to the old figure of fourth class,—a very adroit method of discriminating against western manufacturers.

Mr. WARRINGTON: Since the Western Classification has not been changed I will ask you whether the same effect has not been created in the West as against the Central Territory?

Mr. WILSON: Yes, sir; the possible delivery at the Mississippi

River compared with the previous possible delivery at the East has been enhanced.

Mr. WARRINGTON: That is all.

Mr. MAXWELL: As against Central Territory?

2836 Mr. WILSON: It gives the Eastern manufacturers an advantage because our rates to the river are raised.

Cross-examination:

Mr. COLSTON: Mr. Wilson, how much time have you devoted to the preparation of testimony in this case?

Mr. WILSON: To the testimony in this case I have devoted very little time, because I have never been quite certain that I would appear as a witness in this case until yesterday.

Mr. COLSTON: Are you expecting compensation for the work you have done on this case?

Mr. WILSON: None whatever, sir.

Mr. COLSTON: The position you occupy now in Cincinnati is that of Commissioner, did you say?

Mr. WILSON: I am Secretary of the Board of Trade and Bureau of Transportation, of which Procter & Gamble are members, and they are entitled to my advisory assistance in any case of this kind.

Mr. COLSTON: What is the name of that board?

Mr. WILSON: Board of Trade and Bureau of Transportation.

Mr. COLSTON: You are receiving a salary from that board?

Mr. WILSON: Yes, sir.

2837 Mr. COLSTON: You spoke about the Manufacturers' Association, I think you called it—the National Manufacturers' Association.

Mr. WILSON: Yes, sir; I am Secretary of that.

Mr. COLSTON: Do you receive a salary in connection with that?

Mr. WILSON: I do.

Mr. COLSTON: Are Procter & Gamble a member of that association, too?

Mr. WILSON: Yes, sir.

Mr. COLSTON: And that entitles them to your services?

Mr. WILSON: Yes, sir.

Mr. COLSTON: And they called upon you for your services in this case?

Mr. WILSON: Yes, sir.

Mr. COLSTON: And in pursuance to that call you are here?

Mr. WILSON: Yes, sir.

Mr. COLSTON: And whatever you have done you have done in pursuance of such employments?

Mr. WILSON: Yes, sir.

Mr. COLSTON: Of the expense of your employment they bear their part?

2838 Mr. WILSON: Yes, sir.

Mr. COLSTON: And to that extent you are an employee of that company?

Mr. WILSON: Anyone can form his opinion as to that. I have stated the facts.

Mr. COLSTON: You spoke about being connected with the L. & N. Railway.

Mr. WILSON: Yes, sir.

Mr. COLSTON: I will get you to state again the period of time during which you were connected with the L. & N.

Mr. WILSON: I went there in October, 1863.

Mr. COLSTON: And you remained there until 1869, I believe.

Mr. WILSON: Sometime in 1869.

Mr. COLSTON: During the period 1863 to 1869 did you occupy the same position or different positions?

Mr. WILSON: Different positions in connection with the Freight Department.

Mr. COLSTON: You began by handling freight on the freight platform, I believe you said?

Mr. WILSON: As shipping clerk; I didn't run a truck; I superintended the loading and receiving of freight.

2839 Mr. COLSTON: What other position did you occupy with that road?

Mr. WILSON: I was promoted from the platform to the freight office, where I was a clerk, made waybills and did other clerical work in that office for a considerable time, until I was promoted to the Chief Clerkship of the Freight Department and afterwards to be Assistant General Freight Agent.

Mr. COLSTON: The Chief Clerkship? Was that of the general or local office at Louisville?

Mr. WILSON: The local and general office were one during the war. There was no General Freight Agent during the war, because its business was principally the transportation of Government supplies.

Mr. COLSTON: How long were you Assistant General Freight Agent for the L. & N.?

Mr. WILSON: I cannot remember the exact period. It was a very short time I held that appointment, for I went to the L. C. & L. road as soon as it was opened.

Mr. COLSTON: Who was General Freight Agent at that time?

Mr. WILSON: Mr. Van Alstine.

2840 Mr. COLSTON: How old were you when you were Assistant General Freight Agent?

Mr. WILSON: 31.

Mr. COLSTON: How long did you occupy the position of Assistant General Freight Agent?

Mr. WILSON: I said I could not remember exactly. It was less than a year, for I left there and went to the L. C. & L. which was closely related; the L. C. & L. bonds were guaranteed by the L. & N.

Mr. COLSTON: You said you came to the Cincinnati Southern in 1884?

Mr. WILSON: I have forgotten whether it was 1877 or 1878 that the road opened; I have no records. I made the first time table that was made on that road—from here to Somerset. I was connected with the road until 1884.

Mr. COLSTON: When you were connected with the Cincinnati Southern Railway you said you took part in making classification in what was called the Southern Railway & Steamship Association?

Mr. WILSON: Yes, sir.

2841 Mr. COLSTON: I want to show you a classification of the Southern Railway & Steamship Association, which shows the Committee on Rates as being Sol. Haas and E. P. Wilson. Is that you?

Mr. WILSON: Yes, sir.

Mr. COLSTON: I want to show you that classification in this book I have, which has the endorsement of your name and ask you if that is a classification which you took part in making? (Handing to witness.)

Mr. WILSON: Yes, sir.

Mr. COLSTON: Did you observe when this classification was made? I think it is 1881, but perhaps it is an earlier date.

Mr. WILSON: I will have to ask you to let me have the book again. (After examining.) This appears to have been adopted November 26, 1878. Of course this is a reminder of facts that occurred, and I base my statement on the fact that my name is printed on that committee. So far as that, I identify that classification as the classification which I participated in adopting. It may have been prepared earlier; I think if you look back you will find that the classification of that association appears very frequently as having been re-adopted.

2842 Mr. COLSTON: I am asking at what period.

Mr. WILSON: It took effect on the 15th of March, 1881, according to this book.

Mr. COLSTON: When was it adopted?

Mr. WILSON: In November, 1878; at a meeting held at Atlanta November 26 and 27, 1878. It took effect March 15, 1881.

Mr. COLSTON: Do you know why it was adopted so long before it was to be effective?

Mr. WILSON: I will have to assume that it was held in abeyance until it was adopted by this Association. It shows that the Convention of the Southern Railway & Steamship Association was held in Atlanta November 26 and 27, 1878, "with revisions to date by the Rate Committee;" that while this association met November 26 and 27, 1878, that during the time between that and 1881 the Rate Committee had made some revisions and that Mr. Powers, the General Commissioner, is on this date—March 1, 1881,— promulgating the classification as revised. It had undoubtedly been in effect prior to that, and this is a promulgation as revised March 1, 1881.

Mr. COLSTON: That may be considered as both effective and adopted by revision as of 1881? Is that correct?

2843 Mr. WILSON: That I think is correct.

Mr. COLSTON: That is by that constant revision from 1878 to 1881—it is issued as revised down to that date, down to 1881?

Mr. WILSON: That is what I infer from that.

Mr. COLSTON: Your name is here in this classification I have just

spoken of as one of the Committee on Rates. Is that the committee also on classification?

Mr. WILSON: Yes, sir; classification and rates were considered in connection with each other.

Mr. COLSTON: Did you know these other men who were associated with you on that committee, whose names are given here—Sol. Haas, E. R. Dorsey, W. H. Stanford, John B. Beck, T. M. Emerson, W. G. Raoul, George R. Knox, J. H. Ogden and Virgil Powers, Chairman? They were your associates on that committee?

Mr. WILSON: Yes, sir.

Mr. COLSTON: Did you know those men?

Mr. WILSON: Intimately.

Mr. COLSTON: What sort of men were they as to capacity and ability in their line?

Mr. WILSON: They were all capable men.

2844 Mr. COLSTON: What territory did they represent at that time from the railroad standpoint?

Mr. WILSON: They represented the territory south of the Ohio River, east of the Mississippi, and bounded by the Gulf and the Atlantic Ocean.

Mr. COLSTON: That is, they, including yourself?

Mr. WILSON: Yes, sir.

Mr. COLSTON: Practically all the railroads south of the Ohio River, east of the Mississippi, and bounded on the south by the Gulf and on the East by the Atlantic Ocean?

Mr. WILSON: Yes, sir.

Mr. COLSTON: Now, in making classifications you said it was a matter of judgment. In your experience the railroads have always got the best talent they could to make these classifications, have they not?

Mr. WILSON: I think so.

Mr. COLSTON: And the railroad men make them as fair as possible as a rule, as it is possible to make them, although there may be errors in judgment?

Mr. WILSON: I think that is the case.

Mr. COLSTON: You of course recognize the fact that when

2845 you have a classification consisting of six classes it is necessary to put a great many articles in the same class?

Mr. WILSON: Yes, sir.

Mr. COLSTON: And you recognize the fact that it is an impossibility in a practical sense to make a classification where the classes shall consist only of articles that are in all respects identical, if you have only six classes? Do you understand me?

Mr. WILSON: I think I understand you. I think you make a correct proposition.

Mr. COLSTON: It would be impossible in making a classification of six classes, at the present time particularly, when the number of articles to be moved are perhaps 7,800, that all the articles in any one class would be what might be called homogeneous, or where some crudities or inconsistencies might not be developed?

Mr. WILSON: I think that is true of anything dependent upon uman judgment.

Mr. COLSTON: Now, I do not mean to be personal in this. Going ack to this other railway classification, give us an idea of whom your associates were. They were men who ranked as high
846 as you did in railroad experience at that time?

Mr. WILSON: Oh, yes; a good deal higher at that time?

Mr. COLSTON: I will ask you whether in this classification it is not fact that you classified soap with sugar and coffee; that is, put in he same class?

Mr. WILSON: I would have to refer to the classification on that oint.

Mr. COLSTON: Refer to that please.

Mr. WILSON: (After examining.) Sorghum in barrels and hogsheads, fifth class.

Mr. COLSTON: Sugar in barrels and hogsheads is what?

Mr. WILSON: Sixth class.

Mr. COLSTON: Sugar cane?

Mr. WILSON: Prepaid, sixth class.

Mr. COLSTON: Now, tell us where soap is—common soap?

Mr. WILSON: Sixth class.

Mr. COLSTON: Common soap your committee put in the same class r category with sugar and coffee.

Mr. WILSON: Yes, sir; evidently so.

Mr. COLSTON: You put it in the same category also in the classification with salt in sacks?

2847 Mr. WILSON: Did you ask me about salt?

Mr. COLSTON: Salt in sacks, less than carloads, sixth class, ut salt in sacks was special. Special was the same thing as what you ow call a commodity rate.

Mr. COLSTON: Now, soap you had in the same class with coffee nd sugar—common soap—was it not?

Mr. WILSON: Soap, common, in boxes, sixth class.

Mr. COLSTON: You had a classification there of soap, castile and toilet, did you not, in the second class?

Mr. WILSON: Soap, castile and fancy.

Mr. COLSTON: That is in the second class there?

Mr. WILSON: Yes, sir.

Mr. COLSTON: And that would be in carload lots or any quantity?

Mr. WILSON: This classification is I think without distinction as to carloads or less in both cases.

Mr. COLSTON: In other words, you charged the second class rate for toilet or fancy soap in carloads or in any quantity?

Mr. WILSON: It is obvious from this classification.

Mr. COLSTON: How many classes did that Southern Railway & Steamship Association have?

2848 Mr. WILSON: I am looking over the book to see.

Mr. COLSTON: Did it not have numbered classes and lettered classes also?

Mr. WILSON: I think so; I will tell you. It has been a long time since this happened. It has six classes.

Mr. COLSTON: Six numbered classes?

Mr. WILSON: Yes, sir, and it has eight lettered classes. Six of them are higher than the sixth class. So really sixth class was lower in rate in those days than either Class B, Class C, Class F or Class H.

Mr. COLSTON: But there were lettered classes a great deal lower than sixth class?

Mr. WILSON: Yes, sir; Class A is lower than sixth class; Class E was lower than sixth class. The others were higher.

Mr. COLSTON: Look and see if you did not put iron ore in less than carloads, pig, bridge, and railroad iron, spikes, fish plates and bolts in the same classification with soap?

Mr. WILSON: Iron ore in carloads is carried as a special. Iron, bridge, pig, scrap, railroad iron, spikes, fish plates, and bolts were sixth class.

2849 Mr. COLSTON: That was all in the same class with soap?

Mr. WILSON: Evidently.

Mr. COLSTON: Now, I present this list. I think it would take too long to go over it. I present this list as the list of articles which are classified in the same class with soap by this Southern Railway & Steamship Association tariff made by Mr. Wilson, or participated in by him, effective March 1, 1881. It can go in and counsel can verify it if they desire to do so.

Mr. WARRINGTON: If you will leave the classification with us, we can verify it.

Mr. COLSTON: I will leave it or furnish it to — at any time.

Commissioner FIFER: Mark it as an exhibit. It will be received subject to verification and correction on comparison with the original classification.

(List hereto attached and marked Exhibit K.)

Mr. COLSTON: Mr. Wilson, you would not say that as a universal proposition or would you say as a general proposition what has been spoken of here as relativity of articles is the principal factor in classification?

Mr. WILSON: One factor.

2850 Mr. COLSTON: But there are a great many factors.

Mr. WILSON: All of those factors bear on relativity.

Mr. COLSTON: What I meant by relativity was the sense in which it was used by Mr Warrington, which according to my understanding was the physical characteristics of the articles.

Mr. WARRINGTON: I used "relativity" in the freight traffic sense.

Mr. COLSTON: You would not say that the physical characteristics of the articles was by any means a controlling factor, would you?

Mr. WILSON: There are circumstances under which I would do so, yes.

Mr. COLSTON: And many circumstances under which you would say it would not? Is that not so?

Mr. WILSON: I think the physical characteristics almost universally would come in for almost universal consideration.

Mr. COLSTON: Can you discover the physical characteristics between iron and soap in common?

Mr. WILSON: Yes, sir. In those days they were both articles of manufacture produced outside the territory and as a rule shipped into the territory in small quantities, and iron products of
2851 the class spoken of there were as a rule higher priced than now. Pig iron moved very rarely in those days—we had very much less pig iron in less than carloads—scarcely any, and I suppose the classification committee must have done as other classification committees do—placed pig iron in sixth class because *because* they had no use for it.

Mr. COLSTON: These reasons you are stating now are commercial reasons, not reasons of a physical nature. I speak of physical characteristics, such as sameness in weight to the same cubic space, sameness in method of packing, sameness of cars in which you are to ship. Those are what are ordinarily known as physical characteristics. You did not ship pig iron in the same car as soap.

Mr. WILSON: I do not think we shipped pig iron in less than carloads at all. It got in there as sand gets into the sixth class in the present classification.

Mr. COLSTON: Do you not recognize it as a fact and principle in classification that there are a great many other factors besides size and bulk and resemblance of articles to be considered?
2852 Mr. WILSON: Yes, sir; I think I stated that in my examination in chief.

Mr. COLSTON: Those reasons might be properly termed as commercial reasons?

Mr. WILSON: They are commercial reasons; yes, sir.

Mr. COLSTON: Are there not commercial reasons that would often exist whose influence would take an article out of a class and put it in another class where it did not belong, judged by the superficial observer?

Mr. WILSON: Whilst that is possible I say I may consistently refer to what I have said in regard to soap. I do not think that is true as to soap, particularly in view of the circumstances under which soap is now being considered. The Commission has asked for information as to why it ought or ought not to be taken out of sixth class, and in my examination in chief I endeavored to state why it ought not, and I do not intend to vitiate that statement or modify that statement in the slightest degree,—that there might be conditions under which some such change should be made on some such commodity.

Mr. COLSTON: I do not want you to modify anything.

Mr. WILSON: And I want to be abundantly cautious about that myself.

2853 Mr. COLSTON: As to sugar and coffee, they have been advanced by the Official Classification—on the 1st of January, 1900, have they not?

Mr. WILSON: My recollection is that there was an advance in coffee and that they put it back again,—restored their old rate,

Mr. COLSTON: Is not coffee in the fifth class now, according to the Official Classification?

Mr. WILSON: If I can refer to some information—your classification will show.

Mr. COLSTON: You have qualified as an expert on this classification. Where are sugar and coffee now in the Official Classification—fifth or sixth class? That is, in carload lots.

Mr. WILSON: If you will let me see the classification, I can tell you.

Mr. COLSTON: State whether you know.

Mr. WILSON: I make it a rule not to trust my memory on matters of record, to charge my memory with them.

Mr. COLSTON: Do you know without consulting the classification? You talked pretty learned about sugar and coffee.

Mr. WILSON: I do not talk about matters that can be ascertained in records. After examining the records I will give you
2854 the correct information.

Mr. COLSTON: Can you without examining the Official Classification, No. 20, tell us what class sugar and coffee are in?

Mr. WILSON: I prefer not to.

Mr. COLSTON: In carload lots?

Mr. WILSON: I prefer not to undertake it.

Mr. COLSTON: Why?

Mr. WILSON: Because I do not trust my memory in respect to anything that is a matter of record.

Mr. COLSTON: Well, look at the classification.

Mr. WILSON: (after examining.) Coffee, roasted and ground, in carloads, 5th class, with a "dagger before it. I do not know what that means.

Mr. COLSTON: It indicates a change from the former classification. Now look at sugar.

Mr. WILSON: Sugar, not otherwise specified, in boxes, bags, half barrels or barrels, fourth and fifth.

Mr. COLSTON: You have examined the Official Classification No. 20. Having done so, state what class sugar and coffee are in, in carload lots?

Mr. WILSON: Fifth class.

2855 Mr. COLSTON: They have been in that class since when?

Mr. WILSON: The 1st of January, 1900.

Mr. COLSTON: Will you say to this Commission that the consumption and shipments of sugar have diminished since January 1, 1900, since it has been in that fifth class in the Official Classification?

Mr. WILSON: I have not made any such statement.

Mr. COLSTON: I ask will you say so?

Mr. WILSON: No, I wont.

Mr. COLSTON: Will you state to this Commission that there is any family or any person so destitute or so remote from civilization that they cannot use sugar and coffee and yet such family or person will use Procter & Gamble's manufactured soap or any body else's manufactured soap?

Mr. WILSON: That is a matter of opinion. I think there are cases of that kind.

Mr. COLSTON: I am talking about store soap which they have to buy, and I want to call your attention to the fact in that respect that there is a large consumption of domestic soap—soap made in the family out of grease and lye, boiled in the old iron kettle we have seen in the country.

2856 Mr. WILSON: You mean country soap.

Mr. COLSTON: Yes, sir, not soft soap.

Mr. WILSON: I do not know of my own knowledge that that is consumed as much as when I was a boy. I think the enlightened policy of the railways in carrying soap cheap has probably militated against that production.

Mr. COLSTON: I want you to consider your statement in the comparison between sugar and coffee and soap that there are people who will have to buy as a living necessity what I call store soap and yet cannot buy sugar and coffee.

Mr. WILSON: I believe there are.

Mr. COLSTON: Do you know of a case?

Mr. WILSON: Unfortunately, I do not. I do not mingle much with the people who do not use coffee and sugar.

Mr. COLSTON: Have you talked with counsel for Procter & Gamble about a theory that has been injected into this case, that where an article is in comparatively a few hands that those people can put up the price of that article to the consumer with greater facility than it can be done on one which emanates from a larger concourse or greater number of producers and therefore in one case a

2857 higher freight rate or increased freight rate bears harder upon the manufacturer than in the other case?

Mr. WILSON: I do not remember talking with Procter & Gamble's counsel. I think Adam Smith might have told me that much.

Mr. COLSTON: Did counsel for Procter & Gamble state that theory to you?

Mr. WILSON: No, sir.

Mr. COLSTON: Do you know that Procter & Gamble are not able, with their enormous business in the soap trade, to create an increase in the price of soap?

Mr. WILSON: I have not given that any consideration. It does not enter into the question in my mind.

Mr. COLSTON: Procter & Gamble are one of the largest and most successful of the soap-makers in the United States, are they not?

Mr. WILSON: That is my impression from public repute. I have read somewhere that they produced about one-tenth of the soap used in the country.

Mr. COLSTON: You learned that from the testimony in this case, did you not?

2858 Mr. WILSON: Either from that or saw it in one of the newspapers. I think I read it yesterday in the newspapers.

Mr. COLSTON: Don't you know as a matter of fact that when this question of the raising of the rate on soap was started by the railroads by putting soap into fifth class, that some of the soap-makers suggested to Procter & Gamble, they being the leading spirits in the soap business, that the price of soap be raised, and they refused to do it, but chose rather to fight the railroads to get rates put down?

Mr. WILSON: I do not know anything about that, but, if so, I admire and respect them for being the friend of the people.

Mr. COLSTON: Why?

Mr. WILSON: They are evidently furnishing the people with a valuable commodity at a fair price.

Mr. COLSTON: At the expense of the railroads.

Mr. WILSON: The railroads seem pretty well able to get along. The railroads are good to me, and I am good to them, and I have a high opinion of them.

Mr. MAXWELL: Mr. Wilson, you have given us the names of some of the gentlemen with whom you were associated in this work
2859 of classification and rate making in the South, including Mr. Fink and Mr. Milton H. Smith. They were very eminent and capable men, were they not?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: And your important positions have brought you in contact with the men who have the same work in charge in the North?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: You found in that work men of great ability and experience?

Mr. WILSON: In the North?

Mr. MAXWELL: Yes, sir.

Mr. WILSON: Certainly.

Mr. MAXWELL: Mr. Fink and Mr. Smith were leading men in the Louisville & Nashville System, were they not?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: And in the North the men who have been appointed to look after the matter of rates and classifications have been among the most competent and able men in the railroad service, have they not?

2860 Mr. WILSON: Well, I do not want to be to extravagant in that. I have a very high respect for the gentlemen who are engaged in making classifications, but I am not prepared to pronounce a benediction on them just yet.

Mr. MAXWELL: But taking the railroad service, in the making of rates and classifications for the freight service, operating departments, what has been your observation as to the ability and character of the men?

Mr. WILSON: My observation is that the railroads demand the service of men of high-class ability and first-class character, but I have not agreed with their actions and judgment in many things.

Mr. MAXWELL: And they have not always agreed among themselves.

Mr. WILSON: And they have not agreed among themselves.

Mr. MAXWELL: Whenever you come to a matter of rates and classification, it is a matter that will bear discrimination?

Mr. WILSON: A great deal of discussion.

Mr. MAXWELL: And in your observation the men have discussed them and have not all agreed upon a particular thing?

Mr. WILSON: You will have to excuse me in making my answer.

I have felt that the matter of classification for some years
2861 has been very arbitrarily dealt with and that the men who controlled the Official Classification have not given it the personal attention, and have not been able to give it the personal attention, that in my humble opinion it required; they have left it to be determined at semi-annual meetings, and some of them have stated to me that between the occasional meetings they have left it to a few gentlemen perhaps no less distinguished themselves and probably just as able, but they left it to the discretion of a few gentlemen. I will mention the experience, if you will pardon me, that I had with a request of a manufacturing association in this western country. I went to New York to ask that Committee to reclassify the output of a large class of manufacturers. I called on the Chairman of the Committee, and he denied me the privilege of talking to the Committee, and when I talked to one or two members of the committee outside of his room one of them said to me "Really, Mr. Wilson,"—he was an old friend of mine—"really we have not the time to give to these things. We let Mr. Gill look it up and do about what he sees is proper." Therefore I beg to express the belief that the Official Classification of late years has not received that profound consideration from men of distinction that you think. Mr. Gill's
2862 testimony in Washington confirmed that.

Mr. MAXWELL: You must excuse me for saying that you have not devoted yourself to the question. I was not asking you as to the actual work of the Classification Committee, because I am aware of the fact that you are not a member of the Official Classification Committee. I was asking you as to the character and qualifications of the men who in the railroad service are assigned to the matter of rates and classification.

Mr. WILSON: Well, I am willing to give them a certificate of good character if it is necessary.

Mr. MAXWELL: As compared with the qualifications and ability of the men who are connected with any department of the railroad service, the operating or financial departments, how are the men who are assigned to the rate making and classifying department compared?

Mr. WILSON: They are entirely worthy of their association. I think the traffic men—it may be a little egotism—I think they are a little the brightest of the men in the railroad business.

Mr. MAXWELL: They are the brightest men in the railroad service?

Mr. WILSON: Yes, sir.

2863 Mr. MAXWELL: They have to do what is considered the most important part of the railroad service, have they not?

Mr. WILSON: They certainly have.

Mr. MAXWELL: And they are ordinarily promoted as the result of their service and test of their ability to the positions which they hold?

Mr. WILSON: I agree to that.

Mr. MAXWELL: The duty they have to perform in the matter of rates and classification is a very difficult and complicated one, is it not?

Mr. WILSON: Yes, sir; it is.

Mr. MAXWELL: It is a matter upon which you have to bring to bear a large experience and sound judgment?

Mr. WILSON: It is a matter upon which sound judgment and broad experience ought to be brought to bear.

Mr. MAXWELL: A man could not get a book and get up a theory and be at all efficient as a classification man? He would have to be a man who had qualified himself for the work?

Mr. WILSON: It would be better that he should.

Mr. MAXWELL: And the men who are assigned to that duty by the railroad ordinarily have that qualification of experience and observation?

2864 Mr. WILSON: Yes, sir; certainly.

Mr. MAXWELL: You cannot set down like a schoolmaster and make out a classification of rates, can you?

Mr. WILSON: I think it is difficult to do that.

Mr. MAXWELL: It is not a matter of theory, is it?

Mr. WILSON: It is a matter of practice; it is eminently a practical matter.

Mr. MAXWELL: And a very complicated and difficult matter, is it not?

Mr. WILSON: Yes, sir; I think it is.

Mr. MAXWELL: A matter in which the judgment and common sense—what you call horse sense—of men is an exceedingly important element, is it not?

Mr. WILSON: It is a very important element.

Mr. MAXWELL: When, for instance, you started the operation of the Cincinnati Southern Railway, which was the first effort of the merchants of Cincinnati to get to the South independent of the L. & N., which controlled everything before, you had to set about the making of rates and classifications, did you not?

Mr. WILSON: Yes, sir; I had to make the rates and classifications for the local business of the Southern road, but I found the

2865 rates and classifications of the Southern Railway & Steamship Association which I was glad to adopt. I want to state that the fact that my name is attached to the Committee does not indicate that I was present at the birth of that committee, because the Southern Railway & Steamship Association was an organization early with organized rules and which we of the Southern were obliged to accept or stay out of that territory.

Mr. MAXWELL: Is that not a very just observation that railroads have to deal with conditions as they find them, as they have grown up, and accommodate themselves to their surroundings? They cannot set out *a priori* and establish a new and independent arrangement for themselves, can they?

Mr. WILSON: It is very difficult. It depends entirely upon the railroads, upon the position they occupy, as to the power they have. The railroads are now so interlocked that the idea of a declaration of an independent policy by any railroad would be very difficult to say the least.

Mr. MAXWELL: That is, a man can run a railroad, but he would run into bankruptcy if he tried to run it that way?

Mr. WILSON: He would have to exercise a great amount of tact and judgment if he wanted to have his own way.

2866 Mr. MAXWELL: I suppose when you were actively connected with the rate-making and classifying departments of the railroads—that was in what years?

Mr. WILSON: I left the Southern road in 1884.

Mr. MAXWELL: Afterwards you were in the passenger department?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: Take it prior to 1884; I suppose you were constantly having applications from shippers who thought rates were too high?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: I suppose that you very seldom had to devote your time to shippers who thought rates were too low.

Mr. WILSON: They didn't consume much of our time.

Mr. MAXWELL: I suppose it would be true that with the development of commerce and manufacturing since that time in this great Central Territory the calls made upon the persons who are connected with the rate-making and classifying department of railroads would be more and more increasing, would they not?

Mr. WILSON: That depends. Conditions are better settled now than they were then, and the control, the absolute control,

2867 of policy is better concentrated now than then. In fact the policy of railroads out of Cincinnati is largely controlled in New York now; in those days there were men here who could control the policy of these railroads, and I doubt if the strain upon intellect is any greater now than then.

Mr. MAXWELL: Of course your not being connected with the rate-making or classifying department of any railroad and not having been for fifteen or sixteen years, you do not know just what the daily demands upon those people are.

Mr. WILSON: I am pretty well acquainted with the run of the business still; I have kept in touch with it.

Mr. MAXWELL: But do you know how constant, for instance, the applications that are made to Mr. McLeod, who is the Freight Traffic Manager of the C. H. & D. are, for reductions and readjustment of rates and this, that and the other?

Mr. WILSON: I should think they were about one-tenth of what they were in those days. I judge that from what I know of the stability of the rates and the firmness of Mr. McLeod in keeping his rates in order in comparison with some of his predecessors.

2868 Mr. MAXWELL: That is your impression?

Mr. WILSON: That is my impression; yes, sir.

Mr. MAXWELL: Did they have the classification bureau at the time you were connected with the railroads?

Mr. WILSON: I am not quite clear as to the date when the classification bureau was established.

Mr. MAXWELL: You know now that they have one?

Mr. WILSON: I know now that they have one.

Mr. MAXWELL: That is, the railroads have organized a bureau for

the purpose of giving more efficient attention to that department of the business?

Mr. WILSON: I am not prepared to testify as to that qualification.

Mr. MAXWELL: You do not know that it is to give more efficient attention?

Mr. WILSON: I do not know that. It is to relieve the General Freight Agents of the strain, but I am not prepared to say it is more efficient.

Mr. MAXWELL: But you know there is a bureau established to which these various applications are referred and that a system is provided by which they can be considered at intervals more or less carefully?

2869 Mr. WILSON: There is a system provided by which they are controlled, but I do not know how much they are considered. I have no means of knowing that.

Mr. MAXWELL: And I suppose, not having taken any part, you do not know what consideration was given to the revision which resulted in Official Classification No. 20?

Mr. WILSON: I do not express any knowledge on that.

Mr. MAXWELL: Now, you have said that you do not see any sound transportation reason for advancing the rate on soap.

Mr. WILSON: Yes, sir.

Mr. MAXWELL: I suppose you know that the railroads claim that the reason that they made this revision last January was for the purpose of getting increased revenue?

Mr. WILSON: Yes, sir; I have heard that.

Mr. MAXWELL: And that that was in order to meet what they claimed the increased cost of transportation?

Mr. WILSON: Yes, sir; I have heard that claimed.

Mr. MAXWELL: Now, don't you think that would be a good reason for advancing rates on soap?

Mr. WILSON: No.

Mr. MAXWELL: You don't?

Mr. WILSON: No.

2870 Mr. MAXWELL: Do you think that if the railroads were justified in getting increased revenue on account of increased cost of transportation resulting from a very large increase in the cost of material, labor, etc., that they would not be justified in increasing rates on soap?

Mr. WILSON: No. I was going to say that the probabilities were that the railroads might by the exercise of the same sound economy that some manufacturers do have avoided that economic obligation they allege.

Mr. MAXWELL: What economic obligations?

Mr. WILSON: They say they needed more money. They might have practiced some economies. I am taking the liberty of saying what I think is right to say of the circumstances. I have thought of this very point you are raising and am prepared to meet you on it. I will express the opinion that I believe the railroads could have found a more just way of accomplishing the point they had in view than by taking it out of soap.

Mr. MAXWELL: You say they could practice some economy?

Mr. WILSON: No doubt they could

Mr. MAXWELL: To avoid the necessity of advancing soap. What do you mean by that? What economies?

Mr. WILSON: I am not prepared to go into that in detail.

2871 It is merely a suggestion of a line of thought. They might have pursued a different course with more justice than to undertake to confiscate the profits of manufacturers.

Mr. MAXWELL: That line of thought is not of much value to men of practical affairs, who have to get revenue to meet the increased cost of locomotives, rails, and ties and labor.

Mr. WILSON: I merely made that suggestion for what it is worth.

Mr. MAXWELL: You announce that you are ready to meet me. I would like to know how you are going to meet me and what your suggestions are.

Mr. WILSON: I am not prepared to go into the details of that.

Mr. MAXWELL: Now you suggest that it was not right to take money to meet this increased expense of operation from the profits of manufacturers. What observation have you had of the profits of the manufacturers of soap? What information have you about the profits of Procter & Gamble?

Mr. WILSON: None.

Mr. MAXWELL: Have you not any?

Mr. WILSON: None.

2872 Mr. MAXWELL: You are ignorant about it—a man Secretary of this great Manufacturers' Association National Association of which Procter & Gamble are members and Secretary of this Freight Bureau, you are utterly ignorant of the success of Procter & Gamble?

Mr. WILSON: I know they are successful. We try to associate ourselves only with successful people and to promote their success. I mean I have not given Procter & Gamble's financial affairs any special study.

Mr. MAXWELL: I supposed when you criticised the efforts of the railroads to meet these increases in cost of operation from the business of the shippers that you would attend to the ability of those shippers to respond equitably to an increased charge. You say you have wholly ignored that?

Mr. WILSON: I do not think that is an equitable basis upon which to make additional charges—the prosperity of the shipper.

Mr. MAXWELL: Suppose the railroads were confronted—you are a railroad man—suppose you were confronted with large increases in the cost of locomotives and cars and timber and ties, rails, labor, ballast and everything connected with the operation of a rail-

2873 road, how would you get the money to meet that increased expense?

Mr. WILSON: I do not know whether I could get it or not, but I would endeavor to get it by some means that would increase the volume of the business and I would not assert the right to put my hands in another man's pocket and take it simply because he had it there.

Mr. MAXWELL: Do you know of any efforts the railroads relaxed since January 1, 1900, to increase their volume of business?

Mr. WILSON: By cutting the rates on almost all classes of freights they carried. I state that from hearsay of the officers of the roads themselves, that their rates were cut in divers directions, that they did not maintain their rates on all their business. Here is a class of business, so far as I am informed, if I may base my testimony on information I have heard, which has uniformly paid the rates which they profess to charge.

Mr. MAXWELL: What is that?

Mr. WILSON: Soap.

Mr. MAXWELL: Where did you get the impression that soap pays the rates they are charged?

2874 Mr. WILSON: From conversation with railroad men.

Mr. MAXWELL: What railroad man ever gave you the impression that soap would pay the rates it is charged?

Mr. WILSON: From Mr. McLeod, that they never cut rates on soap.

Mr. MAXWELL: You didn't get that from Mr. Macdonald?

Mr. WILSON: No, sir; I don't think I talked with Mr. Macdonald about that.

Mr. MAXWELL: If you read the testimony of Mr. Macdonald before the Commission——

Mr. WILSON: I read Mr. Macdonald's testimony.

Mr. MAXWELL: Did you read about how he had gone to the railroads and that they had reduced the rates $10.00 per car even on the assurance that they would get the business even if they didn't reduce the rates?

Mr. WILSON: No; I don't remember that. I read the testimony, but that didn't remain in my mind.

Mr. MAXWELL: Now, we are getting away from the point that we were after. I was confronting you with the necessity, as a man of experience, charged with the duty of getting money to meet the heavy advances which had taken place in the cost of tie, 2875 lumber, ballast, labor, cars, etc. You said you would get increased business. Then you referred to cutting of r Were those rates not cut for the purpose of getting business?

Mr. WILSON: I am not prepared to admit that. They are mo frequently cut for purposes of favoritism and prejudice than fro the necessity of getting business. Of course it is always the othe fellow that cuts the rate.

Mr. MAXWELL: I suppose that railroad men, these traffic men, these men of ability who are charged with an important duty as a matter of amusement cut rates?

Mr. WILSON: No was always someone who would cut rates and the others follow suit.

Mr. MAXWELL: It was to get business?

Mr. WILSON: That is the theory.

Mr. MAXWELL: Someone commences.

Mr. WILSON: Yes, sir.

Mr. MAXWELL: And then the others followed to get business?

Mr. WILSON: Yes, sir.
Mr. MAXWELL: Do you know of any object which actuates a traffic man to a higher degree than to get business? Is that
76 not his chief end in life, to get business?
Mr. WILSON: I think that is going into speculation.
Mr. MAXWELL: You are an expert.
Mr. WILSON: I have had a good deal of experience. I had to
rk for a living. I think a traffic man usually tries to get business,
t I have thought he was foolish to cut rates to the extent he does.
Mr. MAXWELL: I believe we all agree that it is very foolish, but
is very hard for a traffic man to see his neighbor getting all the
ffic.
Mr. WILSON: I know that is true.
Mr. MAXWELL: And a man goes to great length in trying to save
imself from that condition, don't he?
Mr. WILSON: Yes, sir; he does.
Mr. MAXWELL: Now, do you know what this increase of soap
om sixth to fifth class means? That is, how much it increases on
n average the cost of transporting a box of soap?
Mr. WILSON: No, I have not figured on it.
Mr. MAXWELL: Have you any idea how much they have increased
?
Mr. WILSON: I have not figured on that.
877 Mr. MAXWELL: Have you any idea, Mr. Wilson? If you have, I would like to know what.
Mr. WILSON: I have no thought to offer on that.
Mr. MAXWELL: Didn't you think before expressing an opinion
pon the equity and justice of the increase about the extent of the
ncrease?
Mr. WILSON: No, because if you open the door to that sort of in-
rease there is nothing short of confiscation of other people's prop-
rty. I am talking upon the principle of the thing.
Mr. MAXWELL: Suppose it increases the cost of the transpor-
ation of soap one cent a box, a box containing one hundred cakes;
hat would you say about the justice and equity of it in view of the
crease that took place last year, or that is claimed by the railroads
have taken place in the cost of providing the locomotive for haul-
g that soap, and providing the cars for hauling the soap, and pro-
ding the rails over which those cars were to be carried, and provid-
g the ballast for holding those rails and providing the labor for
maintenance and operation of the traffic. Suppose there was this
increase in cost, would you think it would be unjust or in-
2878 equitable to ask a person whose business was done to pay a cent or two cents on a box containing 100 bars of soap?
Mr. WILSON: The expense now is no greater than when the price
of soap was made.
Mr. MAXWELL: I am not asking you about what the expense is.
You have not been examined about that. But I am assuming that
when the railroads took this action January 1st, 1900, the cost of
operating their roads and providing locomotives for hauling soap,
and providing cars and providing rails, etc., rails for transporting

those cars and ballast for holding those rails, and labor for maintaining and operating, I will ask you to assume that that cost had really increased to a very great extent; do you think it would be unjust then for the railroads to say that a man whose goods they hauled should pay us a little more for hauling it because it costs us more?

Mr. WILSON: If you said that to all whose goods you haul, that proposition would probably be equitable.

Mr. MAXWELL: When you undertook to see how you would get that increased revenue in order to meet these increased expenses, being a practical man, not dealing in theories, but a practical man who had to carry on business and deal with actual affairs,
2879 would you not examine the commercial conditions of the various businesses whose goods were to be affected by the increased rates?

Mr. WILSON: No; if I felt that my service was not sufficiently requited in any particular, I would endeavor to get the payment from all the people I served. The point I have made, if I have made any, was against discrimination against one article.

Mr. MAXWELL: You would not get it on one article?

Mr. WILSON: I think that is inequitable.

Mr. MAXWELL: I agree with you that it would be entirely inequitable to get from one article the increased cost of transportation cast upon the railroads in 1899. You do not suppose that that increased cost was endeavored to be recouped against one article, do you?

Mr. WILSON: There seems to be a concentration against soap.

Mr. MAXWELL: Take sugar. You say your impression is that that was in the control of a monopoly. You know that was increased, don't you?

Mr. WILSON: Yes; my information is that that was increased with the consent of the monopoly.

2880 Mr. MAXWELL: Where did you get that impression?

Mr. WILSON: That is a general impression.

Mr. MAXWELL: Where did you get it?

Mr. WILSON: I got it first at Washington when the matter was under consideration there.

Mr. MAXWELL: How did you get it? Who told you that the sugar people consented to the increase?

Mr. WILSON: I don't remember who told me, but I received that impression, and I was confirmed in that when the sugar people made no vigorous opposition.

Mr. MAXWELL: Have you any reason to believe, and if so, what reason, that that acquiescence was on any other ground than that they recognized the justice and equity of contributing to that extent to the increased cost of operation? Was there any corrupt agreement between the sugar people and the railroads by which they gave consent?

Mr. WILSON: I did not give any suggestion of that kind.

Mr. MAXWELL: You are aware that coffee, which was a large article of commerce also, had its rates increased, are you not?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: Do you know whether hay was increased?

31 Mr. WILSON: Yes, sir; I remember there was quite a commotion over hay.

Mr. MAXWELL: Don't you know that there were a great many icles the rates on which through classification were increased nuary 1st, 1900, in order to meet this alleged increased cost of nsportation?

Mr. WILSON: There were quite a number of those rates that were tored.

Mr. MAXWELL: They were increased, were they not?

Mr. WILSON: An effort was made to increase them.

Mr. MAXWELL: Now, you know that this revision of January , 1900, was made because the railroads claimed it was necessary get increased revenue, don't you?

Mr. WILSON: I have heard that stated quite frequently.

Mr. MAXWELL: And you are also aware that it was a very general vision, or quite a general revision, are you not?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: There is not anything to suggest that anybody tempted to take any particular advantage of soap, is there?

Mr. WILSON: Yes, because soap is rather a conspicuous article in the advance.

882 Mr. MAXWELL: Is it more conspicuous than sugar?

Mr. WILSON: It is more conspicuous in the advance in this: at sugar is more of a luxury, and in the manner in which it is alt in can better afford it.

Mr. MAXWELL: How about coffee? That can better afford it?

Mr. WILSON: The same, yes, sir. Sugar and coffee are really n my opinion better articles, which ought to bear a higher rate han soap.

Mr. MAXWELL: Because they can afford it better?

Mr. WILSON: Because of all the circumstances.

Mr. MAXWELL: Because they could afford it better? Is that one ircumstance?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: Is that an important circumstance?

Mr. WILSON: Yes.

Mr. MAXWELL: Do you know of any article of commerce in the Jnited States that could better afford to pay its contribution to he increased cost of operating railroads which was cast upon them by the increase of prices last year?

Mr. WILSON: I have stated that there are a number of articles more equitable to place it on.

2883 Mr. MAXWELL: Do you know of any article of commerce that has any connection with the business of the city of Cincinnati, of whose Freight Bureau you are Secretary, that could so well afford to contribute cheerfully its share to the increased cost of operating railroads than soap, bearing in mind the persons who are engaged in that business in this city, and, if there is any other article, I wish you would name it?

Mr. WILSON: I would take that under consideration.

Mr. MAXWELL: Do you know of any mercantile enterprise or manufacturer in the city of Cincinnati whose profits have been so extraordinary as that of the soap manufacturers? If so, name them.

Mr. WILSON: I have not had any access to the profits and loss of any manufacturers of the city of Cincinnati and have not made any examination to form an opinion upon.

Mr. MAXWELL: Several of the commercial concerns of Cincinnati are incorporated, are they not?

Mr. WILSON: Yes, sir.

Mr. MAXWELL: Do you know of any manufacturing corporation in the city of Cincinnati whose stock in less than twelve years came to the value of 400 or 500 and who pay dividends to the amount of 20 per cent.?

2884 Mr. WILSON: I am not prepared to name any now.

Mr. MAXWELL: You do not mean to leave the impresson that you are ignorant of the immense profits of the Procter & Gamble Company?

Mr. WILSON: I am not absolutely ignorant about that, but the point I wanted to make is that I have made no expert examination of Procter & Gamble's affairs. My opinion is that our manufacturing enterprises here are quite profitable.

Mr. MAXWELL: Then in coming on this stand to give this Commission your opinion as an expert of the equity of the revision which has endeavored to place upon soap as one of hundreds of articles an increased rate you have not thought it important to make any inquiry as to the prosperity of that business?

Mr. WILSON: Certainly not. I consider that to be a false system of assessment.

Mr. MAXWELL: Then, I suppose you, as a practical railroad man, confronted with the necessity of getting an increase of revenue for the purpose of meeting an increased cost of doing that business, would pay no attention whatever to the prosperity of particular business upon which you were going to levy the increased rates?

2885 Mr. WILSON: I do not see where the connection comes in or how it imposes an obligation.

Mr. MAXWELL: And you would not make any inquiry as to how much of an increase it would put upon their commerce; for instance, whether it would increase the cost to Procter & Gamble one, two, or five cents on a box? You would not make any inquiry of that kind?

Mr. WILSON: No, sir; I think not, sir.

Mr. MAXWELL: How would you go about it?

Mr. WILSON: You would have to give me a little time to confront me with doing it. I have simply said to the best of my knowledge and belief, and given my reasons, that it was inequitable. I do not recognize that that entails the necessity of going into the affairs of any company that produces soap.

Mr. MAXWELL: You do not consider it necessary to inquire into their affairs or to know how much it affects the business? What would you do? What would you inquire into? Where would you get this revenue and how would you increase it?

Mr. WILSON: I am not quite certain I could get it.
Mr. MAXWELL: That is all.

2886 Redirect examination:

Mr. WARRINGTON: Would it occur to you, Mr. Wilson, in fixing rates for a teritory bounded by the Atlantic and the Mississippi and Canada and the Ohio and Potomac Rivers that there was more than one manufacturer of soap and that you had to consider all the producers of soap in making freight rates for that vast territory? Would that dawn upon you?

Mr. WILSON: Certainly.

Mr. WARRINGTON: Would you fix rates for the whole territory that would fit a particular manufacturer or that a particular manufacturer could possibly pay if you found him at Utica, or Oswego or Chicago? Would that be a principle upon which you would go?

Mr. WILSON: No; I cannot recognize that as good principle.

Mr. MAXWELL: Let us take another thing. An assumption has been made here of a necessity for additional revenue. Let us think of that for a moment. I will ask you what bearing these considerations would have in fixing rates. As a railroad man have you observed that the railroad companies have raised the rates with the rise in prises of their rolling stock and the road beds and labor
2887 and correspondingly reduced those prices with hard times? Has that been a fluctuation that has been observed by the railroads regularly, or at all?

Mr. WILSON: I never heard the question raised seriously at all.

Mr. WARRINGTON: Did it ever occur?

Mr. WILSON: I never heard of the railroads reducing tariffs because iron was cheap. They generall- reduce rates in the face of competitive results and rarely raise them, in my opinion.

Mr. WARRINGTON: Would it be practicable to change freight rates with every fluctuation in the market?

Mr. WILSON: Not with regard to the general commodities moved. That principle has been recognized in connection with a few leading commodities, where the railroads thought that they had to enter into partnership with people practically.

Mr. WARRINGTON: Have the railroad companies in the last ten years increased the weight and efficiency of their equipment and road beds to any extent?

Mr. WILSON: Yes, sir.

Mr. WARRINGTON: What was the object of that?

Mr. COLSTON: We object to that.

Mr. WARRINGTON: We want to go into that to show you they have managed to absorb these fluctuations in the cost of rail-
2888 road materials.

Mr. MAXWELL: We admit that the railroads have constantly reduced rates. They have constantly reduced them until the last report of the Interstate Commerce Commission shows that one-third of the railroads are in the hands of receivers.

Mr. WARRINGTON: They have never reduced the rates on soap in the last fifteen years. That is the article we are talking about.

Mr. COLSTON: You say they have not reduced the rate on soap. You forget Mr. Macdonald's testimony that he went to the railroads and said owing to change in conditions he induced them to cut rates.

Mr. WARRINGTON: They cut rates on articles that went into soap. That is a little thing; that was a little episode.

Commissioner FIFER: The record will show all that.

Mr. WARRINGTON: Precisely. It was proved in this case that the railroads have never changed their freight rates on soap in the last fifteen years by reducing them.

Mr. COLSTON: We refer to the record, pages 1177 to 1180.

Commissioner FIFER: What is the question you wish to ask now, Mr. Warrington? Put the question in the record and we will pass on it.

2889 Mr. WARRINGTON: I will state it, withdrawing the other question. What is your judgment of the necessity or expediency of raising the freight rates in view of the reduction in economy of handling freight traffic which has gone on in the last ten years, seeing that this rise in prices of railroad materials and labor was but temporary?

Mr. COLSTON: We object to that question, because all that was gone into

Commissioner FIFER: Yes, sir; I think so. We have wandered away from the question of the reasons for taking soap from the sixth and putting it in the fifth class.

Mr. COLSTON: The cross-examination of Mr. Maxwell of this witness was based on the *the* question of the necessity of the increase.

Commissioner FIFER: The witness stated that the change should not have been made, and then Mr. Maxwell went into this necessity for increased revenue on a supposed case. The witness has already broadly stated that there was no necessity in his judgment as an expert for taking soap from the sixth class and putting it in fifth class, and anything which in his judgment bears upon that question I suppose he would have a right to state.

2890 Mr. COLSTON: We desire to enter an objection.

Mr. WARRINGTON: I will ask the reporter to read the question.

The question was repeated, as follows:

"What is your judgment of the necessity or expediency of raising the freight rates in view of the reduction in economy of handling freight traffic which has gone on in the last ten years, seeing that this rise in prices of railroad materials and labor was but temporary?"

Mr. WILSON: My impression in regard to the movement is that it was unwise under the circumstances, as claimed.

Mr. WARRINGTON: Do you or not believe that the increased facilities for the economic handling of freight traffic was sufficient during the last ten years to absorb any temporary rise in railroad materials and labor?

Mr. COLSTON: We object to that on the ground that certainly — is not within the subject prescribed by the Commission upon which further testimony should be taken.

Commissioner FIFER: The testimony will be taken subject to the objection. The witness may answer.

The question was repeated by the stenographer.

2891 Mr. WILSON: That would be quite a general opinion I have, this this movement was unnecessary, particularly the manner in which it was made and was not justified by any existing circumstances.

Mr. WARRINGTON: In anything you have said on cross-examination have you or not meant to change the reasons and statements that you have made touching the inequalities and discriminations and unfairness of this Classification No. 20?

Mr. WILSON: I have not intended to modify any of my statements in my examination in chief.

Mr. WARRINGTON: In this modern method of fixing freight rates, does any part of it make provision for giving the shippers—the people whom the railroads serve—a hearing or a voice in the transaction?

Mr. WILSON: You mean the establishment of the Official Committee in New York?

Mr. WARRINGTON: Yes.

Mr. WILSON: I have had several letters from its chairman saying it does not contemplate according any oral hearings to shippers.

Mr. MAXWELL: We object to any statement of contents of
2892 letters. If there are letters, they should be produced.

Mr. WARRINGTON: Have you those letters?

Mr. WILSON: If I may be permitted to state what they are——

Mr. MAXWELL: We object to his stating.

Commissioner FIFER: The letters must speak for themselves if there is objection.

Mr. WARRINGTON: Mr. Wilson, you were asked and you stated several things touching the reasons for cutting freight rates. Let me ask you to suppose that the railroad companies had not consented to the cutting of rate*d*, but had collected those which were authorized by schedule 19, do you think there would have been any necessity, or any alleged necessity, to raise the rates and thus produce schedule 20?

Mr. MAXWELL: We object to the question upon the ground that it is not within the subject upon which the Commission has authorized further testimony, and upon the further ground that this witness has had no connection with railroads or the operation of railroads within the last fifteen years and he cannot tell from knowledge.

Mr. WARRINGTON: The assumed premise of Mr. Maxwell's argument was that there was a necessity. Now, this is one of the
2893 ways of testing it; I do not know or say that it is the only way. This is only an item of evidence, and therefore it bears upon the question of what reason there was for taking soap out of sixth class and putting it into fifth class.

Commissioner FIFER: My understanding of the question upon

which we were to take additional evidence was as to the commercial quality of soap, whether it would bear the rate, etc., and other matters of that kind, and not as to the necessity; I thought that part was concluded. It is only a general recollection, however, that that branch of the case was concluded.

Mr. WARRINGTON: I do not want to press it if objected to by your honor.

Commissioner FIFER: It opens up a wide field—about the cost of bridges, materials, labor, etc.

Mr. WARRINGTON: I think I have sufficient to establish that when I come to it. Mr. Wilson, you spoke of the stability of rates. I will ask you how stable rates can be made now under the present railroad organization and management within the Official Classification territory in comparison with what it could ten years ago, or five years ago, or even a year ago?

Mr. WILSON: I am afraid I am not competent to answer
2894 that question. I could only answer from what I have read in newspapers and heard; and would only be an impression.

Mr. MAXWELL: We don't want your impression.

Mr. WARRINGTON: Are the railroad companies closer together or farther apart than they used to be?

Mr. WILSON: I am not prepared to speak of that.

Mr. WARRINGTON: Now Mr. Wilson, I want to ask you something as to this Southern Railway & Steamship Association Classification of 1881, to which Mr. Colston has called your attention. I wish you would take this Exhibit "K" and compare it with this Classification, beginning at page 407, and tell us whether they included rice, and I will give you more articles later in their exhibit.

Mr. MAXWELL: Don't the exhibit speak for itself?

Mr. WARRINGTON: It certainly speaks for itself.

Mr. MATTHEWS: Rice is also with soap in the classification. You have not given the full list.

Mr. WILSON: Rice is not on this list in Exhibit "K."

Mr. WARRINGTON: Where is rice in the classification?

Mr. WILSON: In bags, barrels, casks or tierces, fifth class,
2895 "carloads see Note 9." That means that in less than carloads it is fifth class.

Commissioner FIFER: Allow me to suggest, would it not be well to offer this whole classification?

Mr. WARRINGTON: If we had it; yes, sir. If they will furnish us with a copy, we will put it in.

Mr. COLSTON: That Exhibit "K" purports to show only those things that were classified with soap in that Southern Railway & Steamship Association classification. The purport of the question was that we left off rice, which had been classified with soap.

Commissioner FIFER: You were taking the articles that were classified with soap there.

Mr. COLSTON: Showing the association in which they placed soap. They placed it largely in the same association that we did.

Mr. WILSON: I believe I have answered the question.

Commissioner FIFER: Yes, sir; you have answered it.

Mr. WARRINGTON: I want to use this classification tomorrow morning. I cannot finish without seeing it; I am told things here that I want to look into.

2896 Commissioner FIFER: Who owns the book?

Mr. COLSTON: The Cincinnati Southern Railway and they have been writing to me to return it.

Mr. GILL: The Commission can get the Classification by application to any Southern line, by giving the number of it.

Mr. WARRINGTON: I move to rule out this Exhibit "K." I want to meet this with the classification or I want Exhibit "K" to go out. I am entitled to one or the other.

Commissioner FIFER: I think they have a right to offer a portion of the classification. Of course that entitles you to all the document, whatever it may be, to meet your view of the case, or any portion of it.

Mr. GILL: If you will give me the number of the classification, I will guarantee to get a copy of it for you.

Mr. COLSTON: You spoke of our offering a portion. That classification in its arrangement does not have the articles separated as to classes. The articles are arranged alphabetically according to subjects, so that when you want to find or get a list of the articles of one class you will have to go through and pick them out. Exhibit "K" represents all the articles according to that classification which are associated with soap, and that is all it purports to do. Of

2897 course if something else is not associated with soap, it does not purport to show it.

Mr. WARRINGTON: If it can be understood that Exhibit "K" is to remain in on condition that we have an opportunity to put in this classification, *whe* we will relieve you of any further strain here and close this hearing this afternoon.

Commissioner FIFER: I do not want to change your manner of conducting the case on my account, Mr. Warrington, but my suggestion is that you offer this classification; there is some way of designating it. It is then in the recor*n*. Then you can make such use of it as you have a right to. Of course the testimony of a witness cannot change what is in the classification.

Mr. WARRINGTON: Mr. Wilson, what have you to say of that Southern classification?

Mr. WILSON: That classification applied to a period nineteen years ago, when commercial conditions and transportation in the South may or may not have been comparable with the commercial conditions of to-day, and I think they were not. For example, soap *k*arried in that country was carried not from the factory for

2898 distribution, but as a general rule in small quantities and very rarely in carloads. Therefore soap was carried in sixth class even then.

Mr. WARRINGTON: Was there a soap factory in the South at that time?

Mr. WILSON: Not that I know of.

Mr. WARRINGTON: Well, what opportunity had you to know?

Mr. WILSON: From contact with the business of the South. If

there had been soap factories seeking transportation of their commodities, it would have been drawn to my attention.

Mr. WARRINGTON: What changes now in the commercial conditions concerning sugar and coffee have occurred since 1877 or 1878 or 1881?

Mr. WILSON: Sugar and coffee were higher than they are now and were the subject of more general competition.

Mr. WARRINGTON: Was the production in as few hands as now?

Mr. WILSON: Do you mean the refining?

Mr. WARRINGTON: Yes.

Mr. WILSON: No; the sugar was not in a trust then.

Mr. WARRINGTON: When did it go into a trust?

Mr. WILSON: Within the last five or six years. I do not
2899 remember the exact time as to that.

Mr. WARRINGTON: Do you know what articles soap is associated with in the present Southern Classification?

Mr. COLSTON: We object on the ground that it is not relevant or proper examination.

Mr. WARRINGTON: I will not press it. That is all.

Commissioner FIFER: Mr. Warrington, do you want to make the offer of the classification referred to on cross-examination of Mr. Wilson, the Southern Railway & Steamship Association classification?

Mr. WARRINGTON: We make the offer on condition that we have the classification in full for that purpose, and we now do offer it as Exhibit "L."

Mr. MAXWELL: With reference to reduction of rates, you do not mean to say that rates have not been reduced on a great many articles in the last ten years, do you?

Mr. WILSON: I did not make a statement of that kind.

Mr. MAXWELL: The fact is they have been reduced on a great many articles?

Mr. WILSON: My observation is that rates have been reduced on a great many articles.

Mr. COLSTON: Take iron. When iron was greatly de-
2900 pressed didn't the railroads reduce rates on iron to meet that depression and manfactured iron too?

Mr. WILSON: That is my impression.

Mr. COLSTON: You said that in 1881 sugar was a great deal higher than in 1900.

Mr. WILSON: I said that.

Mr. COLSTON: What was the price?

Mr. WILSON: I cannot tell you what it was, but I have the impression as a purchaser of sugar. My observation is that sugar was never bought cheaper than in the last two years. I admit that, whatever may be the cause, I buy sugar cheaper than in 1881.

Mr. COLSTON: You have assigned the high price of sugar as a reason why this classification of Southern railways would not apply at present.

Mr. WILSON: I did not say it would not apply at present. I said conditions had changed. It may apply. I don't know.

Mr. COLSTON: You stated it was higher than now?
Mr. WILSON: Yes, sir.
Mr. COLSTON: Showing that the price of the article does enter into the classification of it?
2901 Mr. WILSON: I think I stated that in the direct examination.
Mr. COLSTON: That is all.
Mr. WARRINGTON: That is all, Mr. Wilson.
Witness excused.

Mr. MATTHEWS: If your honor please, I hold in my hand a book entitled "Report of Changes in Railway Transportation Rates on Freight Traffic throughout the United States, 1852 to 1893," prepared by C. C. McCain for the Senate Committee on Finance. On page 446 is Table 20 entitled "Freight Rates, All-rail, New York to Chicago," and it covers the rates from 1867 down to 1892, showing rates on dry goods, furniture, stoves, molasses, soap, starch, rice, leather and a great many things. I have taken from that table, however, the three columns referring to common soap, starch and rice. This shows that common soap started out in 1867 at a less rate than starch and a somewhat higher rate than rice, and so on down to 1878, when the rates became alike on those three articles, and remained so until 1887; that then there was a change made, soap having a higher rate than starch and rice until the order of the Commission
2902 in the former case of Procter & Gamble against the railroads, whereupon it was put back, and from then on down to 1892 it had the same rate. There is a table showing New York to St. Louis on page 458; on 478 showing Cincinnati, on 504 Rochester, and on page 506 the rates from Philadelphia. The rates from Philadelphia to Pittsburg being local to the Pennsylvania road and the rates from New York to Rochester being local to the New York Central. The point sought to be made by it is that during all that course of years soap had a lower rate than starch and since 1878 the same rate as rice. It bears in our opinion upon the question as to whether or not soap should now have as low a rate as rice and starch and be classed in the sixth class. There is one table I left to mention last—Table 18 on page 440, which gives the average rates from 1867 down to 1892, the rates on these same three articles, all rail, from New York to Chicago, and is a summary, so to speak, of the changes in the first table I mentioned.
Mr. COLSTON: We object to this.
Mr. MATTHEWS: We offer this as Exhibit "M." The tables are all attached together in that.
Commissioner FIFER: Let it go in subject to verification and correction.
2903 Mr. MAXWELL: That has nothing to do with the question upon which further testimony was to be taken.
Mr. WARRINGTON: It has everything to do with it, your honor.
Mr. MAXWELL: It has something perhaps to do with the case, but not with the subject of further testimony.

Mr. MATTHEWS: It is a practical admission by all these roads that soap ought to be classified with rice and starch.

Mr. MAXWELL: This Commission directed further testimony with reference to the net weight practice and as to the reasons for separating soap from certain other articles and grouping it with certain other articles for the purpose of classification. Has that anything to do with the reasons?

Commissioner FIFER: We will receive it subject to consideration by the Commission.

Mr. COLSTON: Another objection is that it is hearsay, not competent, not sworn to by any witness, and has no proper sanction in law.

(The tables referred to hereto attached and marked Exhibit "M.")

Mr. MATTHEWS: Mr. McCain was I understand about this time the Statistician and prepared this, as he states in the opening
2904 or introductory matter, from matter he got from the railroads themselves, etc.

Commissioner FIFER: The book or report is on file with the Commission I suppose.

Mr. COLSTON: It was prepared for the Senate Committee; just the same as if he wrote a letter here.

Mr. WARRINGTON: We will argue that later.

Mr. MAXWELL: We will argue it now.

Mr. WARRINGTON: It won't be profitable.

Mr. MATTHEWS: We offer extracts from the testimony of Paul Morton, Henry J. Page, Henry Coops and H. W. Brown on the subject of net weights, taken on or about November 11, 1889, and as to H. W. Brown, during January 1890, in Cases 235, 236 and 237, before the Interstate Commerce Commission; Procter & Gamble *vs.* C. H. & D. Ry. Co. *et al.*, Procter & Gamble *vs.* C. C. C. & St. L. Ry. Co. *et al.*, and Procter & Gamble *vs.* Orland Smith and H. C. Yergason *et al.*

Mr. MAXWELL: Is that copied from testimony in the old record?

Mr. MATTHEWS: Yes, sir; an extract from the testimony of each one of them.

Mr. COLSTON: Then it is their evidence prepared.

2905 Mr. MATTHEWS: It is all of their evidence on the subject of net weights.

Commissioner FIFER: I suppose it is proper for them to offer the whole record.

Mr. MATTHEWS: I will say this in order to be exactly correct. I have omitted some testimony touching the matter of net weights of H. W. Brown regarding some correspondence between him and Mr. Gill which I did not think it necessary to put in.

Mr. MAXWELL: This is received subject to our right to put in any other parts that we deem to be important or necessary?

Commissioner FIFER: And subject to considerations by the Commission.

(Extracts of testimony referred to hereto attached and marked Exhibit "N.")

Mr. MATTHEWS: If your honor please, I offer also, on one sheet,

which will be marked Exhibit "O," Table 13 from this report referred to, made to the Senate Committee—a portion of Table 13, covering the years 1885 and 1886, showing the average rates on classified tariff via all-rail routes, New York to Chicago; also a portion of Table 43, showing freight rates charged for transportation of classified traffic from Chicago to New York, for the years 1885 and 1886.

2906

Mr. MAXWELL: This does not show what pages you take it from?

Mr. MATTHEWS: It shows the number of the table.

Mr. MAXWELL: Here is a publication which somebody has made containing a lot of tables——

Mr. MATTHEWS: It is a public document.

Mr. MAXWELL: It is received subject to presenting objections to the Commission.

Mr. WARRINGTON: That is the way with a large part of this.

Mr. MATTHEWS: About the offer of these tables 13 and 43, it is simply to show what we claim now and leave it to the verification of the records of the Commission. We claim that during 1885 and 1886, just prior to the Interstate Commerce Act, soap was shipped west from New York at fourth class on the westbound classification and that it was shipped east from Central Territory at seventh and eighth classes in the eastbound classification. Now this Table 13 shows that the rate of fourth class articles west in 1885 was 27 cents.

Commissioner FIFER: Where do you get that table—from this book?

Mr. MATTHEWS: Yes, sir. In 1886 it was 35 cents, whereas in 1885 and 1886 the rate east from Chicago to New York on common soap was 40 cents in less than carloads and 35 cents in carloads.

2907

Commissioner FIFER: Where is all that? On this statement?

Mr. MATTHEWS: I say I will have to leave it to the verification of the Commission that soap was classified in seventh and eighth in the westbound classification and fourth in the eastbound classification, showing that soap was shipped west at a great deal cheaper rate than it was shipped east, bearing upon the questern of Eastern manufacturers not having net weights on soap.

Commissioner FIFER: It is received subject to objections and subject also — the verification and consideration by the Commission.

(Hereto attached and marked Exhibit "O.")

Mr. MATTHEWS: I also offer Appendix E to the memorial made to the Interstate Commerce Commission by Mr. George R. Blanchard, which was attached to the motion for a rehearing in the former cases of Procter & Gamble against the railroad companies, and which petition for rehearing was signed by all the railroads then before the Commission except the initial carriers in Cincinnati. Appendix E is a statement of soap shipments made by James S. Kirk & Co. from Chicago to various points, showing weight tendered by shipper and weight as obtained by the Central Traffic Association Weighing Bureau for the period April 1st, 1887, to April 30th, 1889; also shipments made by N. K. Fairbanks & Co. for the same period.

2908

Mr. COLSTON: We object to that. It is a compilation from a source we know nothing about.

Mr. MATTHEWS: It is a copy of what is on file in the old case. I will say that it shows the weighing up of a large number of shipments of Kirk and Fairbanks, and also one shipment of Babbitt, some of which were at net weights and all of which were at less weights than gross weights, and is in contradiction of certain testimony which has heretofore been taken on the other side.

Commissioner FIFER: It will be taken subject to objection and consideration by the Commission. The Commission will finally pass on the admissibility of it. The matter can be argued.

(Hereto attached and marked Exhibit "P.")

Mr. WARRINGTON: We wish to offer a paper which we do not concede to be within the order under which your honor is sitting,
2909 and we think it fair to the other side to notify them, and if your honor thinks it proper to attach it to these depositions, why of course it may be done, but we do not ask you now to rule upon the question of its introduction. It is a paper read by L. F. Loree, Vice President of the Pennsylvania Lines West of Pittsburgh.

Mr. MAXWELL: He is not Vice President of the Pennsylvania Lines.

Mr. WARRINGTON: General Manager of the Pennsylvania Lines West of Pittsburgh. It is published in advance, and is to be read this week in Paris.

Mr. MAXWELL: Where?

Mr. WARRINGTON: In Paris. It is fair to notify you of what we propose to do. It is on the subject of the economical size of trucks or capacity of freight cars.

Commissioner FIFER: That would be a matter for use in argument.

Mr. WARRINGTON: We want to use it in argument and want to offer it when we come before the Commission, and we shall use parts of it in our brief upon the theory that the Commission will care to hear what Mr. Loree has to say.

2910 Commissioner FIFER: The question of its competency will be reserved to be passed upon by the full Commission.

Mr. MAXWELL: I object on behalf of the Cincinnati, Hamilton & Dayton to the introduction of this address by Mr. Loree in Paris.

Mr. WARRINGTON: That is all I believe.

Mr. MAXWELL: As to Exhibits "M" and "N" we desire to reserve the right to offer such further testimony as may be proper in rebuttal of them.

Mr. WARRINGTON: I do not see how you can reserve a right that you have no right to reserve.

Mr. MAXWELL: I do not know whether the Commission is going to receive them or not.

Commissioner FIFER: If there is nothing further, we will adjourn.

Adjourned at 6:20 p. m.

911 And afterwards, to-wit: on the 22nd day of November, A. D. 1905, an opinion of the Court was filed in the Clerk's Office of the Court aforesaid, in said cause, which opinion is clothed in words and figures following to-wit:

United States Circuit Court, Southern District of Ohio, Western Division. In Equity.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY ET AL.

Mem.

On February 24, 1900, the Procter & Gamble Company, a corporation of New Jersey, engaged in the manufacture and sale of soap and a continuous shipper of its soap over the railways of the defendants herein, by petition, complained to the Interstate Commerce Commission that the defendants herein having adopted as the basis for fixing rates, a classification of property for shipment over their lines of railway, known as "Official Classification No. 20," wrongfully and in violation of the Act of Congress to Regulate Commerce, placed common or laundry soap in carload lots, in the fifth class, instead of in the sixth class thereof, where it rightfully belonged; and in less than carload lots, in the third class, instead of in the fourth class thereof, where it rightfully belonged, and prayed for an order commanding the defendants herein,—

2912 "To cease and desist from refusing to carry common soap in carloads at sixth class rates, and from refusing to carry common soap in less than carload lots at fourth class rates."

Pending the hearing of the complaint the defendants reduced the classification of common soap in less than carload lots, to 20% less than third class, but not less than fourth class. Upon final submission, the Interstate Commerce Commission dismissed the complaint as to the classification of carloads, and sustained it as to less than carloads, of common or laundry soap, and ordered the defendants, in accordance with a report and opinion then filed,—

"—To cease and desist on or before the 15th day of June, 1903, from charging, demanding, collecting or receiving for the transportation of common or laundry soap in less than carload quantities charges or rates per 100 lbs. equal to 20% less than the rates fixed by them for the transportation of articles designated as third class in the established freight classification called and known as the "Official Classification," which said 20% less than the third class rate for the transportation of common or laundry soap in less than carloads are found and determined in and by said report and opinion of the Commission to be in violation of the Act to Regulate Commerce."

Afterwards, on the 20th day of July, 1904, this suit was brought

by the Interstate Commerce Commission to enforce the order so made, which, it alleges, the defendants have wholly disregarded and set at naught and have wilfully and knowingly violated and disobeyed. And it further alleges that the action of the defendants in changing the classification of common or laundry soap was in violation of the Act to Regulate Commerce; that the rates
2913 charged by the defendants since December 29, 1899, for the transportation of common or laundry soap in less than carload quantities, are unreasonable and unjust; that said rates, based upon the classification of March 10, 1900, give undue and unreasonable preference or advantage to other descriptions of traffic, and subject common or laundry soap, in less than carload lots, to undue prejudice and disadvantage; that the classification complained of resulted in unlawful discrimination and prejudice against common or laundry soap in less than carload lots and against localities in "Official Classification" territory, and against producers, shippers, dealers and consumers.

The defendants deny these allegations and say that the findings of fact upon which the order was based, were not authorized by the evidence submitted to the Interstate Commerce Commission, but were contrary to the evidence.

Section 14 of the Act to Regulate Commerce, provides, among other things,—

"That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found."

The burden of proof, therefore, rests upon the defendants to show that the facts are not as found by the Interstate Commerce
2914 Commission, and that the change of classification complained of, was not made in violation of the Act to Regulate Commerce.

At the hearing counsel for the defendants claimed, (1), that the change of classification and increase of rates were justified by the cost of service in handling and carrying soap in less than carload lots, and (2), that the present classification maintains the same relative difference in rates between soap in carload lots and soap in less than carload lots which obtained before the change was made.

1. Testimony taken since the commencement of this suit shows that the cost of service for handling and carrying freight in less than carload lots greatly exceeds the cost of handling and carrying it in carload lots but it is not shown that as between the two the relative cost of handling and carrying ever increased one way or the other either before or since the new classification was made; and the evidence therefore, is not sufficient to rebut the presumption that the original classification of common or laundry soap was and is reasonable and just, arising from the voluntary maintenance thereof

by the defendants for thirteen years prior to the change complained of. During these thirteen years, common or laundry soap in carload lots varied between the fifth and sixth classes; but in less than carload lots, never varied from the fourth class. Nor is the evidence sufficient to rebut the finding of the Commission that the new classification resulted in discriminations among shippers, through—"the application of a fixed percentage to varying and different rates."

2915 2. The question presented is not one involving only the proper relation of soap in less than carload lots, to soap in carload lots, but also its proper relation to other articles in less than carload lots. Freight is carried either in carload lots, or in less than carload lots. This division of freight necessarily attends transportation by rail. Classification, within the meaning of the Act to Regulate Commerce, relates to these divisions separately. The classification of soap in less than carload lots is not contralled by the classification of soap in carload lots, nor its re-classification by the maintenance of the relative difference in rates between the two; but, on the contrary, the classification and re-classification of soap in less than carload lots should be controlled by the relation it bears to other articles in less than carload lots,—that relation to be determined by the degree in which, in comparison with such other articles, its handling and carrying is, or may be, affected by the cost of service, competitive and commercial conditions, volume, density, distance, value and risk of loss or damage. It is true that these elements must also be considered in determining the classification of articles in carload lots, but from a different standpoint. A given article of traffic may be more or less desirable when shipped in less than carload lots, than when shipped in carload lots. Bulk, weight, form, manner of packing, etc., may materially affect the classification of articles to be carried in the same car, when they might have little or no weight in the classification of a single article to be carried in carload lots. A single car may carry many different

2916 articles and necessarily, the convenience, inconvenience, cost of handling and carrying, must be considered in fixing the rate which each should bear and in determining the class to which each should be assigned; but the elements of disadvantage attending the combination of different articles in one shipment are eliminated from shipments of each article separately in carload lots, and it follows that rates and classification must be controlled by the character of the shipment; that shipments which include and combine different articles of traffic in less than carload lots, require rates and classification necessary to meet the convenience, inconvenience and cost of handling and carriage incident to such combination, which do not attend the shipment of a single article in carload lots. In other words, the classification of soap for carriage in less than carload lots should be based upon its relation to other articles for carriage in less than carload lots, and not upon its relation to soap for carriage in carload lots.

Common soap in less than carload lots was assigned to the fourth class in the first classification made under the Act to Regulate Com-

merce, and remained there until the re-classification complained of, and did not follow the variations of soap in carload lots; and the replacing of soap in carloads in the fifth class did not justify the displacing of soap in less than carloads from the class in which it had been voluntarily maintained by the defendant for more than thirteen years.

2917 If it be claimed that prior classifications and rates have never been adequate to the cost of handling and carrying freight in less than carload lots, then there should be a general re-classification which would apportion the cost of service equally, or approximately so, among the different articles of traffic and between carload lots and less than carload lots thereof.

The evidence not only fails to justify the change of classification complained of, but shows that the change resulted in unlawful discrimination between shippers.

A decree will be entered in favor of the complainant, as prayed.

2918 And afterwards, to-wit: on the 24th. day of November, A. D. 1905, came the Complainant by its Solicitor, and filed in the Clerk's Office of the Court aforesaid, a copy of a certain Letter, in this cause, which Letter is clothed in the words and figures following to-wit:

Copy.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
WASHINGTON, *July* 15, 1904.

Edward A. Mosely, Secretary.

Hon. Sherman T. McPherson, United States District Attorney, Cincinnati, Ohio.

DEAR SIR: Enclosed please find petition of the Interstate Commerce Commission against the Cincinnati, Hamilton and Dayton Railway Company, *et al.*, which pursuant to the provisions of the Act to regulate commerce you are requested by the Commission to file and prosecute in the Circuit Court of the United States for the Southern District of Ohio at the City of Cincinnati in said District.

I also enclose copies of preliminary motion and order such as have been made in other cases where the Commission has endeavored to enforce orders by petition to the Courts.

It being made your duty under section 16 of the Act to prosecute this petition under the direction of the Attorney General of the United — he has been advised by the Commission that it has applied to you to institute and prosecute the same in its behalf. A copy of this Act referred to is herewith enclosed, by reference to which you will observe that the law contemplates a speedy hearing, and we trust that an early day will be fixed upon for answer and for appearance of the defendants. When obtained please send us copy of order of court as to service.

Section 16 authorizes the court to prescribe the mode of service. We have the requisite number of copies of petition now ready.

The Commission will, so far as it is able to do, give you
2919 such assistance as it can and as it may be advised by you is desired.

Very respectfully, EDW. A. MOSELEY,
Secretary.

And afterwards, but on the same day, to-wit: November 24th. 1905, came the Complainant by its Solicitor, and filed in the Clerk's Office of the Court aforesaid, a copy of a certain Letter, in this cause, which Letter is clothed in the words and figures following to-wit:

Copy.

M. D. P. 38195. DEPARTMENT OF JUSTICE, W. S. G.
WASHINGTON, *July* 28, 1904.

Sherman T. McPherson, Esq., United States Attorney, Cincinnati, Ohio.

SIR: I beg to acknowledge the receipt of your letter of the 25th. instant, enclosing copy of a petition filed in the Circuit Court of the United States for the Southern District of Ohio on the 20th. instant, by direction of the Interstate Commerce Commission, in the case of the Interstate Commerce Commission *v.* The Cincinnati, Hamilton and Dayton Railway Company, *et al.*

You are hereby directed to prosecute said case in the United States Circuit Court, and take whatever action may be necessary to secure a speedy determination of the cause. I am informed by the Interstate Commerce Commission that they are perfectly willing to assign counsel to assist you in this case, if you so desire. Perhaps it would be as well for you to communicate with the Commission direct, with respect to the matter of the assignment of counsel to co-operate with you in the prosecution of this case.

Respectfully, W. H. MOODY,
Attorney General.

2920 And afterwards, but on the same day to-wit: November 24th. 1905, came the Complainant by its Solicitor, and filed in the Clerk's Office of the Court aforesaid, a copy of a certain Letter, in this cause, which letter is clothed in the words and figures following to-wit:

Copy.

J. H. G. OFFICE OF THE ATTORNEY GENERAL,
WASHINGTON. D. C., *March* 9, 1905.

Sherman T. McPherson, Esq., United States Attorney, Cincinnati, Ohio.

SIR: There is enclosed herewith, for your information, a copy of a letter of this date appointing W. A. Glasgow, Jr., of Philadelphia,

a special assistant to you in the case of the Interstate Commerce Commission *v.* Cincinnati, Hamilton and Dayton Railway Company, *et al.*, pending in your District. The order of the Interstate Commerce Commission is to be enforced by a petition in equity under your supervision.

Respectfully,

W. A. DAY,
Acting Attorney General.

2921 And afterwards, to-wit on the 25th. day of November, A. D. 1905, a Decree was entered upon the Journal of said Court, in said cause which Decree is clothed in the words and figures following to-wit:

Circuit Court of the United States for the Southern District of Ohio, Western Division.

INTERSTATE COMMERCE COMMISSION
vs.
CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

Decree.

This cause coming on for hearing upon the bill of complaint, the answers thereto, proof taken, stipulations of counsel, the proceedings before the Interstate Commerce Commission and the entire record, and the same having been duly considered by the court:

It is hereby ordered, adjudged and decreed, that the order made by the Interstate Commerce Commission and drawn in question in this cause be in all things affirmed and made the order of this court and that injunction issue restraining and enjoining the defendants each and all of them from further disobedience to said order and from further charging or receiving for the transportation of common or laundry soap in less than carload quantities rates per hundred pounds equal to 20 per cent. less than the rates fixed by them for the transportation of articles designated as third class in their established freight classification, called and known as the "Official Classification."

It is further ordered, adjudged and decreed, that the costs of this cause be taxed against the said defendants.

The foregoing is hereby approved for entry, this the 25th day of November, 1905, and the court with the approval of the plaintiff finds that this is a case prosecuted under the direction of the attorney general of the United States in the name of the Interstate Commerce Commission.

____ ____,
U. S. Judge.

2922 And afterwards, but on the same day to wit: November 25th, 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid, their certain Peti-

tion for appeal & *and* assignment of errors, which petition for appeal & assignment of errors, are clothed in the words and figures following to-wit:

Circuit Court of the United States, Southern District of Ohio, Western Division.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE & OHIO RAILROAD COMPANY.

Petition for Appeal and Assignment of Errors.

The defendants represent that this case was instituted and has been prosecuted under the direction of the Attorney General and that the subject in dispute is of the value of more than two thousand dollars, and they pray an appeal from the decree of this court to the supreme court of the United States, and assign as error

1. That the order of the Interstate Commerce Commission enforced by said decree was not a lawful order and should not have been enforced;

2. That the classification of common or laundry soap in less than carload lots at twenty per cent. less than third class does not violate the Act to Regulate Commerce, and does not result in an unjust or unreasonable charge for the service performed and does not subject any particular description of traffic to any undue or unreasonable prejudice or disadvantage;

2923 3. That this court erred in holding

a. That the classification of soap in less than carload lots is not controlled by the classification of soap in carload lots;

b. That the classification of soap at twenty per cent. less than third class is unlawful—even if such classification should be based upon its relation to other articles for carriage in less than carload lots.

4. In entering a decree and injunction against the defendants and in not dismissing the petition.

The defendants show to the court that they will be subjected to irreparable injury and to a multiplicity of suits if said decree and injunction should be enforced pending said appeal, and they pray the court to make an order suspending the injunction during the pendency of the appeal.

LAWRENCE MAXWELL, JR.,
HARMON, COLSTON, GOLDSMITH & HOADLEY,
Attorneys for the Defendants.

2924 And afterwards, but on the same day to-wit: November 25th, 1905, an entry was made upon the Journal of said Court in said cause which entry is clothed in the words and figures following to-wit:

Circuit Court of the United States, Southern District of Ohio, Western Division.

No. 5897.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, and THE BALTIMORE & OHIO RAILROAD COMPANY.

Order Allowing Appeal and Suspending Injunction.

This cause came on to be heard upon the petition for appeal filed by the defendants. On consideration whereof the court, with the consent of Sherman T. McPherson, District Attorney of the United States, and upon the submission by him to the court of the written directions given to him by the Attorney General of the United States, and filed as part of the record in this case, finds that this suit was instituted and has been prosecuted in the name of the Interstate Commerce Commission under the direction of the said Attorney General, and, further, that the subject in dispute is of the value of more than two thousand dollars. The appeal prayed for to the supreme court of the United States is therefore allowed in open court.

2925 And it appearing to the court that the defendants may be subjected to irreparable injury and to a multiplicity of suits if said decree and injunction should be enforced pending said appeal,

It is ordered that said decree of this court be suspended and that said injunction be superseded pending said appeal until or unless otherwise ordered by the supreme court of the United States. This appeal is allowed and said suspension of the decree of this court is granted upon condition that the defendants shall perfect said appeal within thirty days, and that they shall execute a bond with sufficient surety, to be approved by this court or the clerk thereof, in the sum of ten thousand dollars ($10000) payable to the United States for the benefit of whom it may concern.

2926 And afterwards, to-wit: on the 1st. day of December, A. D. 1905, came the Defendants by their Solicitors, and filed in the Clerk's Office of the Court aforesaid their certain Supersedeas Bond, which said Supersedeas Bond is clothed in the words and figures following to-wit:

Know all men by these presents: That The Cincinnati, Hamilton & Dayton Railway Company, The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, The Pennsylvania Railroad Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, The Lake Shore & Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, The Baltimore & Ohio Southwestern Railroad Company and The Baltimore & Ohio Railroad Company, as principals, and The United States Fidelity & Guaranty Co. of Baltimore, Md. as surety, are held and firmly bound unto the United States, for the benefit of whom it may concern, in the sum of Ten Thousand Dollars, for the payment of which sum they bind themselves, their successors and assigns, jointly and severally by these presents.

Done this 25th day of November, A. D. 1905.

Whereas the above named principals have prosecuted an appeal to the supreme court of the United States from a decree renderd by the circuit court of the United States for the southern district of Ohio, western division, in the case of the Interstate Commerce Commission as plaintiff against said principals as defendants, being case No. 5897 on the docket of said court;

Now, therefore, the condition of this obligation is such that if the said principals shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and re-
2927 main in full force and virtue.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY, AND
THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
By LAWRENCE MAXWELL, JR., *Their Attorney.*
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY,
THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, AND
THE BALTIMORE & OHIO RAILROAD COMPANY,
By EDWARD COLSTON, *Their Attorney.*
THE UNITED STATES FIDELITY & GUARANTY CO.,
By EDWARD E. SHIPLEY, [SEAL.]
Attorney in Fact.

Approved.
A. C. THOMPSON,
Judge of the United States District Court for Southern District of Ohio, Sitting and Holding United States Court.

2928 And afterwards, to-wit: on the 30th. day of December, A. D. 1905, an Entry was made upon the Journal of said Court in said Cause, which Entry is clothed in words and figures following to-wit:

Entry Journal 8, Page 213.

Upon the application of the Clerk of this Court, and for good cause shown, the time for filing the Transcript of Record of the proceedings of this Court in this cause in the Supreme Court of the United States, is hereby extended thirty (30) days from this date.

And afterwards, to-wit: on the 29th. day of January, A. D. 1906, an Entry was made upon the Journal of said Court in said cause, which Entry is clothed in the words and figures following to-wit:

Entry Journal 8, Page 251.

Upon the application of the Clerk of this Court, and for good cause shown, the time for filing the Transcript of Record of the Proceedings of this Court in this cause in the Supreme Court of the United States, is hereby extended ten (10) days from this date.

2929 THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, Benjamin R. Cowen, Clerk of the Circuit Court of the United States, within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said Court, in the above entitled cause as the same appears of record and on file in the Clerk's Office of said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Cincinnati, Ohio, this 31st day of January, A. D. 1906.

[Seal of the Circuit Court, Southern Dist. of Ohio.]

B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI,
Deputy Clerk.

2930 Supreme Court of the United States of America.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit, ss:*

To Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, on the* thirtieth day of December next, pursuant to a Petition for Appeal, filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of Ohio, Western Division, wherein The Cincinnati, Hamilton & Dayton Railway Company, a corporation and others are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the

said appellants as in the said Petition for Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this First day of December, in the year of our Lord one thousand nine hundred and Five, and of the Independence of the United States of America the one hundred and Thirtieth.

A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

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*Not exceeding 30 days from the day of signing.

2931 [Endorsed:] No. 5897. United States Circuit Court, Southern District of Ohio. Western Division. The Cincinnati, Hamilton & Dayton Railway Co. *et al.*, Appellant-, *vs.* The Interstate Commerce Commission, Appellees. Citation on Appeal. Filed Dec. 1, 1905. B. R. Cowen, Clerk. Lawrence Maxwell, Jr., Harmon, Colston, Goldsmith & Hoadly, Solicitor- for Appellant-.

I hereby enter the appearance of The Interstate Commerce Commission and waive services herein.

SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

2932 Supreme Court of the United States, October Term, 1905.

No. 589.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL., Appellants.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Notice for the Purpose of Abridging the Printed Record under Rule 10, Clause 9.

The appellants consider the testimony of the following witnesses before the Interstate Commerce Commission unnecessary for the consideration of the appeal on the errors which they have assigned, and they therefore propose to omit the same in printing the record, towit:

William Cooper Procter.
Thomas J. Griffin.
J. W. Creed.
John H. Wanner.
Edward Wrigley.
Theodore Stover.

John J. Brooks.
Ira T. Fortmeyer.
Thomas J. Hawkins.
Oliver Dore, Jr.
William J. Eavenson.
R. Fleming Handy.
Jesse Howell.
Walter R. Maund.
James H. Davis.
F. H. Kingsbury.
David Brown.
William A. Procter.
Bradley M. Delemater.
Carl A. Lautz.
Godfrey Weiss.
Earl M. Dye.
Edward M. Kelley.
Edgar C. Andrews.
R. G. McGonigle.
S. S. Hand.
Russel W. Johnson.
2933 John Fitzpatrick.
E. E. Zeigler.
F. H. Kennedy.
J. H. Stewart.
James Means.
F. A. Dean.
W. L. Cromlish.
James P. Orr.
W. J. Peebles.
John Grant.
Stephen C. Strunz.
James P. Welsh.
H. H. Gregg.
J. B. Dorrington.
Byram C. Robbins.
Jacob C. Flach.
George W. Dexter.
Charles A. Jennings.
Walter W. Dodge.
John Hoge.
Robert Carlisle.
Fenton Lawson.
Joseph S. Leeds.
E. P. Wilson.

Also the opening statements of counsel on the hearing before the Interstate Commerce Commission, page 517, line 6, to page 561.

EDWARD COLSTON,
LAWRENCE MAXWELL, JR.,
Counsel for the Appellants.

Service of the foregoing notice accepted this 7th day of June, 1906.

L. A. SHAVER,
Of Counsel for the Appellee.

2934 [Endorsed:] File No. 20,091. Supreme Court U. S. October Term, 1906. Term No. 201. The Cincinnati, Hamilton & Dayton Railway Co. *et al.* App'ts, *vs.* The Interstate Commerce Commission. Designation by Appellants of parts of record necessary to be printed, and acceptance of service of notice of same. Filed June 7", 1906.

2935 Supreme Court of the United States, October Term, 1905.

No. 589.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL., Appellants,
vs.
THE INTERSTATE COMMERCE COMMISSION, Appellee.

Designation by Appellee of Additional Parts of Record to be Printed.

1. The appellee, in pursuance of Subdivision 9 Rule 10 of Rules of the Supreme Court, designates as additional parts of the record which it deems material and which should be printed the testimony of the following witnesses before the Interstate Commerce Commission which the appellants in a notice heretofore filed have named as unnecessary and, therefore, propose to omit, to-wit:

William Cooper Proctor.	Jacob C. Flach.
F. H. Kingsbury.	George W. Dexter.
David Brown.	Charles A. Jennings.
William A. Proctor.	Walter W. Dodge.
Bradley H. Delemater.	John Hoge.
Carl A. Lautz.	Robert Carlisle.
Byram C. Robbins.	Fenton Lawson.
Joseph S. Leeds.	E. P. Wilson.

2936 The testimony of the other witnesses named in said notice filed by appellants may be omitted and also the opening statements of counsel on the hearing before the Interstate Commerce Commission, extending from line 6 page- 517 to 561.

All the remainder of the record is deemed material by the appellee and it designates the same for printing.

L. A. SHAVER,
Of Counsel for the Appellee.

Service of the foregoing notice accepted this the 25th day of June, 1906.

LAWRENCE MAXWELL, JR.,
Counsel for the Appellants.

2937 [Endorsed:] File No. 20,091. Supreme Court U. S. October Term, 1905. Term No. 201. The Cincinnati, Hamilton and Dayton Railway Co. *et al.*, App'ts, *vs.* The Interstate Commerce Commission. Designation by Appellee of additional parts of record to be printed. Filed June 28", 1906.

Endorsed on cover: File No. 20,091. S. Ohio C. C. U. S. Term No. 201. The Cincinnati, Hamilton & Dayton Railway Company *et al.*, appellants, *vs.* The Interstate Commerce Commission. Filed February 8th, 1906. File No. 20,091.

FILE COPY.

Office Supreme Court, U. S.
FILED.
JAN 25 1907
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, et al., *Appellants*,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

BRIEF FOR THE APPELLANTS.

THE BARCLAY PRINTING CO., Strobridge Building, 108-118 W. Canal St., Cincinnati, O.

Supreme Court of the United States,

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, et al., *Appellants*,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

BRIEF FOR THE APPELLANTS.

STATEMENT OF THE CASE.

The Interstate Commerce Commission, in a proceeding commenced before it on February 24, 1900, by the Procter & Gamble Company against the appellants, made an order, on May 14, 1903, requiring the defendants on or before June 15, 1903, to cease and desist from charging for the transportation of common or laundry soap in less than car load quantities rates equal to 20 per cent. below the rates fixed for the transportation of articles designated as third class in their established freight classification, known as the Official Classification. R. 83. This suit was instituted by

In this brief and in the record the abbreviations C. L. and L. C. L. are frequently used to indicate car load and less than car load shipments.

the Commission in the circuit court on July 20, 1904, to enforce that order, and the appeal is from a decree in favor of the Commission.

The pleadings in the case before the Commission and its opinion and order are annexed to the petition in the circuit court as exhibits.

The case was heard in the circuit court on the evidence before the Commission and on additional evidence taken by the defendants, directed principally to showing the extra cost incident to handling and transporting freight in less than car loads. It established conclusively that the extra charge made by them for that service was less than the cost of the service. The complainant took no additional testimony.

In the defendants' Official Classification, referred to in the order of the Commission, all traffic is divided into six principal classes, numbered from 1 to 6, the rates decreasing as the number of the class increases and being therefore highest on class 1 and lowest on class 6. The first general classification known as Official Classification No. 1 was adopted about the time the act to regulate commerce went into effect. Up to 1900 nineteen Official Classifications had been issued. In all those issued since 1891 soap of all kinds C. L. was put in class 6 and L. C. L. in class 4. Official Classification No. 20 issued in December, 1899, to become effective January 1, 1900, raised soap C. L. from class 6 to class 5, and soap L. C. L. from class 4 to class 3. By an amendment of Official Classification No. 20 made on March 10, 1900, within a month after the Procter & Gamble Company filed their complaint before the Interstate Commerce Commission, soap L. C. L. was reduced from class 3 to 20 per cent. less than class 3, and since that date all soap C. L. has been and is in class 5, and all soap L. C. L. in 20 per cent. below class 3.

The complaint of the Procter & Gamble Company sought to compel the defendants to put common soap C. L. in class

6 and L. C. L. in class 4. The Commission held that common soap C. L. was properly in class 5 and refused to order its change to class 6, but that common soap L. C. L. should be in class 4, and they ordered it taken out of the intermediate class in which the railroads had put it, to-wit 20 per cent. less than class 3.

The effect of this order, if enforced now, would be to disturb the relation which has existed for sixteen years between car load and less than car load rates on common soap, and to compel the railroads to perform the service incident to handling and transporting soap in less than car load lots for less than the actual cost of the service.

The rates on the various classes between Cincinnati and Chicago and between Cincinnati and St. Louis are as follows: third class 25 cents per 100 pounds; 20 per cent. less than third class 20 cents; fourth class 17 cents; fifth class 15 cents; sixth class 12 cents. The decision of the Commission therefore is that 15 cents (fifth class) is a reasonable rate for common soap C. L. between Cincinnati and Chicago and between Cincinnati and St. Louis, but that 20 cents (third class less 20 per cent.) is unreasonable for the same thing L. C. L., and that it should be 17 cents. If the railroads were to conform to the order of the Commission they would receive only 2 cents more per hundred pounds for carrying common soap L. C. L. between Cincinnati and Chicago, than for carrying it C. L., although the testimony shows that the extra cost of depot handling alone is about 5 cents, to which must be added the extra cost of transportation which is a still greater percentage of the C. L. rate.

ASSIGNMENT OF ERRORS.

1. The order of the Interstate Commerce Commission was not a lawful order.

2. It was not warranted by the complaint filed before the

Commission, and ignored its express admissions as to the proper relation between soap in car loads and less than car loads.

3. The classification of common soap in less than car loads at 20 per cent. below third class does not result in an unjust or unreasonable charge for the service rendered, or subject the traffic to any undue or unreasonable prejudice or disadvantage. These were the only violations of the act to regulate commerce charged in the complaint of the Procter & Gamble Company.

4. If common soap in car loads is properly in fifth class, as the Commission has held, common soap in less than car loads is entitled to be put in 20 per cent. below third class.

5. The uncontradicted evidence before the circuit court showed conclusively that the extra charge made for carrying soap in less than car loads is below the actual cost of the service.

6. The court erred in holding that the classification of soap in less than car loads should not be based on its relation to soap in car loads. No such issue was raised. The very opposite claim was expressly made in the complaint before the Commission.

7. But if the classification of soap in less than car loads, ought to be based upon its relation to other articles in less than car loads, and not upon its relation to soap in car loads, no violation of the act to regulate commerce is shown by putting it in 20 per cent. below third class.

ARGUMENT.

I.

No issue was raised as to the proper relation between common soap in car loads and less than car loads. The petition of the Procter & Gamble Company alleged that they should be classified with reference to each other, and what the difference should be.

The circuit court held that "the classification of soap for carriage in less than car load lots should be based upon its relation to other articles for carriage in less than car load lots, and not upon its relation to soap for carriage in car load lots" (R. 1091). But that was not the claim of the petition of the Procter & Gamble Company.

This suit is based upon the order of the Commission, and that in turn is founded upon the complaint of the Procter & Gamble Company. We turn therefore to that complaint to ascertain what alleged violations of the act to regulate commerce the defendants were called upon to answer, for it must be conceded that the Commission could not lawfully find them guilty of violations of the act with which they were not charged, and that they were not called upon to prove facts that were admitted in the complaint. Section 13 of the act provides for the filing of a petition before the Commission by any person claiming that the act has been violated, "which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular

violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

The allegations of the petition of the Procter & Gamble Company with respect to soap in car loads are not material, except as they bear upon the charges made with respect to soap in less than car loads, because the Commission dismissed the petition as to car load rates and classification. But the decision of the Commission that common soap in car loads was properly in fifth class, and that fifth class rates were reasonable, is important. That finding, taken in connection with the allegations of the petition as to the commercial relation between soap in car loads and soap in less than car loads, and the proper difference in rates between the two, and in connection with the uncontradicted evidence before the circuit court as to the extra service and cost of handling soap in less than car load lots, required a decision that soap in less than car loads was properly in the class where the railroads had put it, and that the rates were reasonable.

The petition admitted that the difference in rates between fourth class and sixth class, which is the precise difference between 20 per cent. less than third class and fifth class, was the proper allowance for the carriage of common soap in less than car loads. It alleged that the difference between class 3 (where soap L. C. L. was originaally placed in Classification No. 20) and class 5 was "very much greater than between said fourth and sixth classes"(R.10), and asked that L.C.L. soap be put in fourth class and C.L. soap in sixth class "so as to maintain the proper relation and difference of rates between car load and less than car load lots" (R. 12). It further alleged that "common soap in less than car load lots is and always

has been in constant and sharp commercial competition with soap in car load lots" (R. 10), and that the defendants by putting L.C.L. soap in third class and C.L. soap in fifth class "have subjected and do thereby subject said traffic in common soap in less than car load lots to an undue and unreasonable prejudice and disadvantage in its commercial competition with common soap in car load lots" (R. 10).

If the foregoing allegations concerning the commercial relations between soap in car loads and soap in less than car loads, and the proper difference in rates between the two, had been coupled with the further allegation that fifth class rates were reasonable for soap in car loads, the case would be plain on the face of the petition. But the Commission has found that soap in car loads is properly in fifth class and that fifth class rates are reasonable and the case must be dealt with on that basis just as if the fact were alleged in the petition.

II.

Official Classification No. 20 does not increase the difference theretofore existing between L. C. L. and C. L. soap rates.

From 1891 to 1900 soap was sixth class C. L. and fourth class L. C. L. Taking the rates between Cincinnati and Chicago as illustrations, which we do for convenience, the rate for C. L. soap was 12 cents per hundred pounds, and for L. C. L. soap 17 cents, or an extra charge for L. C. L. carriage of 5 cents per hundred, or 41.66 per cent. of the C. L. rate. The classification which the Commission enjoined makes an extra charge for L. C. L. freight of 5 cents per hundred, which is 33 1-3 per cent. of the C. L. rate. In other words by Classification No. 20 the railroads charge the same number of cents extra, as formerly, and a less percentage of the C. L. rate, for L. C. L. carriage. Formerly the L. C. L. rate was 141.66 per cent. of the C. L. rate; now it is only 133 1-3 per cent. of the C. L. rate. The railroads increased

the C. L. rate in 1900 from 12 cents to 15 cents, or 3 cents, which the Commission says was lawful, and they raised the L. C. L. rate from 17 cents to 20 cents, or 3 cents, which the Commission says was unlawful!

If we take the New York-Chicago rate for illustration we get the same result. C. L. soap was raised from 25 cents to 30 cents, and L. C. L. soap from 35 cents to 40 cents, or 5 cents in each case. The former L. C. L. rate was 10 cents more than the C. L. rate, and the present L. C. L. rate is 10 cents more than the C. L. rate. There has been no increase in the extra charge for L. C. L. The difference between the C. L. and L. C. L. rate remains the same. The percentage of difference is slightly decreased. Formerly the L. C. L. rate was 140 per cent. of the C. L. rate (35 cents as against 25 cents), now it is 133 1-3 per cent. of the C. L. rate (40 cents as against 30 cents).

The following testimony of C. E. Gill, chairman of the classification committee is not disputed. Rec. 233.

"Q. What was the effect of the rule as you finally established it in March, 1900, putting soap and other similar articles 20 per cent. less than 3d class, upon the relation of less than car load rates to car load rates, as they had theretofore prevailed?

A. It established precisely the same difference.

Q. So that after March 10th, 1900, the extra rate that was charged for the service of L. C. L. shipments over C. L. shipments of the same commodities, of the same materials, was the same as it had been before?

A. Precisely the same."

During the hearing before the Commission the chairman said: "It had the effect substantially of making the difference between car loads and less than car loads substantially the same as it was before," R. 573.

The witness McLeod speaking of the reduction on March 10, 1900, from third class to 20 per cent. less than third class, said:

"The controlling reason was to reduce the difference between the car load and less than car load to about what it had been, so that the large shipper under the new schedule would have no more advantage over the smaller shipper than he had before, or the car load would have no more advantage over the less than car load than before." R. 573.

III.

The extra charge made by the railroads for the extra service they render in carrying soap in less than car load lots does not cover the cost of the service.

At the hearing before the Commission no evidence was offered on this point because it was not in issue. The petition admitted that the proper difference in rates between car load and less than car load shipments of common soap was precisely what the appellants claim. The evidence taken by the defendants in the circuit court, which the complainant did not attempt to controvert, and the findings of the Commission itself in other cases concerning the extra cost of carrying freight in less than car loads, leaves no doubt on the subject, and shows conclusively that the extra cost of handling soap in less than car loads is greater than the charge made by the railroads for the service.

The testimony of the following witnesses, taken in the circuit court, shows the cost of depot handling of L. C. L. freight in Cincinnati, Chicago, Columbus and East St. Louis, the average loading of L. C. L. cars, the percentage of different classes of freight therein, and the expense of making transfers en route, to-wit:

Charles A. Barnard, freight agent of the C. H. & D. at Cincinnati; R. R. Harris, freight agent of the Big Four at East St. Louis; A L. Robinett, freight agent of the P. C. C. & St. L. at Cincinnati; W. H. Sparks, freight agent of the Pennsylvania Lines at Columbus, Ohio; T. A. Connor, freight

agent of the Big Four at Cincinnati; Charles E. Fish, freight agent of the B. & O. S. W. at Cincinnati; J. D. Fidler, chief clerk of the freight station of the B. & O. S. W. at East St. Louis; John E. Loomis, freight agent of the P. C. C. & St. L. at Chicago; M. W. Pierce, freight agent of the Chicago, Milwaukee & St. Paul at Chicago; C. T. Scaife, freight agent of the Illinois Central at Chicago, and Joseph Rehkamp, loading foreman for the B. & O. S. W. at Cincinnati.

The defendants also took the following testimony in the circuit court to show the extra cost of transporting freight in less than car loads: J. C. Van Winkle, general superintendent of the Big Four; Charles E. Pierret, chief clerk to the general superintendent of the B. & O. S. W., and the testimony of Charles E. Gill, chairman of the Classification Committee, on several subjects.

Section 1 of the Interstate Commerce Act declares that all charges shall be reasonable and just for the "service rendered." What service do the railroads render in L. C. L. shipments as compared with C. L. shipments, and what does it cost?

In C. L. shipments the shipper loads the car and the consignee unloads it. This is done in a yard or on a side track. The carrier furnishes no depot or labor, and incurs no liability for improper loading. To get the benefit of C. L. rates on soap the shipper must ship at least 30,000 pounds. His average load is above that. A single way bill for the car is all the clerical service required.

In the case of L. C. L. shipments the carrier provides a depot and a large force of men who receive the goods from the shipper and carry them into the depot, assort them in piles according to destination, and load them into cars. The same process is gone through with in unloading and delivering them to the consignee at the point of destination, and very

frequently in transferring them from one car to another en route. For instance an L. C. L. shipment from Cincinnati to Erie, Pennsylvania, is loaded at Cincinnati, transferred into another car at Columbus, Ohio, and again at Alliance, and again at New Castle, and finally unloaded at Erie, making three transfers en route. See deposition of W. H. Sparks, freight agent of the P. C. C. & St. L. at Columbus, Ohio, R. 173. On the same subject see depositions of Barnard, freight agent of the C. H. & D. at Cincinnati, R. 116-117; Connor, freight agent of the Big Four at Cincinnati, R. 178; Fish, freight agent of the B. & O. S. W. at Cincinnati, pp. 187-189; Fidler, B. & O. S. W. at East St. Louis, p. 197; Loomis, freight agent of the P. C. C. & St. L. at Chicago, p. 220.

Two or three transfers en route are not uncommon.

The clerical service in connection with L. C. L. shipments is very heavy. A separate way bill must be made out for each shipment, and there may be 150 waybills for each car, as against one way bill for a C. L. shipment.

The details of this extra service and its cost is given in the testimony of the men in charge of freight depots at Cincinnati, Chicago, Columbus and East St. Louis, and is not contradicted by any evidence. It is shown that the cost of depot and transfer handling of L. C. L. merchandise almost consumes and in many instances more than consumes the entire extra charge which the railroads make for L. C. L. shipments. The average cost of depot handling alone at Chicago is 63 cents per ton of 2,000 pounds and at Cincinnati 33.5 cents, so that the mere depot handling of L. C. L. shipments between Cincinnati and Chicago comes to 4.82 cents per hundred. The Interstate Commerce Commission proposes to allow the railroads 2 cents per hundred for that service!

The testimony as to the cost of depot handling is as follows:

P. C. C. & St. L. at Chicago 64 cents per ton, Loomis, p. 219.

Chicago, Milwaukee & St. Paul at Chicago, 61 to 62 cents per ton, Pierce, p. 223.

Illinois Central at Chicago, 63 cents per ton, Scaife, p. 227.

C. H. & D. R. at Cincinnati, 35 cents per ton, Barnard, p. 113.

Big Four at East St. Louis, 72 cents per ton, Harris, p. 155.

P. C. C. & St. L. at Cincinnati, 31.4 cents per ton, Robinett, p. 161.

P. C. C. & St. L. at Columbus, 35.4 cents per ton, Sparks, p. 170.

Big Four at Cincinnati, 31.5 cents per ton, Connor, p. 177.

B. & O. S. W. at Cincinnati, 36.31 cents per ton, Fish, p. 187.

B. & O. S. W. at East St. Louis, 49.1 cents per ton, Fidler, p. 196.

The foregoing figures cover only the cost of the manual labor and the clerical work in handling L. C. L. freight at depots. They do not include an allowance, which should be made, for the cost of providing and maintaining the depots, and for interest on the investment, which is heavy, especially in cities.

The only criticism counsel for complainant made in the circuit court of the foregoing evidence as to the cost of depot handling was that it showed the average cost, and was not confined to the cost of handling common soap at depots; but the witnesses all testify that the average cost fairly represents the cost of handling soap. Loomis, p. 222; Pierce, p. 224; Scaife, p. 227; Robinett, pp. 164-169; Sparks, p. 171; Connor, p. 184; Fish, p. 187; Fidler, pp. 196, 197, 202.

IV.

The extra cost of transporting merchandise in less than car load lots exceeds the extra charge made by the railroads for L. C. L.

We have shown the extra cost of depot and transfer handling. The extra cost of transporting goods in less than car load lots, after they are loaded, is even greater than the cost of handling them in depots. This is due principally to the fact that the average load in an L. C. L. car is between 5 and 6 tons, whereas C. L. cars carry on the average 22 tons, so that it takes 4 times as much equipment to carry the same amount of merchandise when shipped in less than car load lots, as when shipped by the car load. This is shown very clearly in the depositions of Van Winkle, superintendent of the Big Four, and Pierret of the B. & O. S. W., and is confirmed by findings of the Commission in other cases.

We make the following extracts from the testimony of Van Winkle; commencing at p. 256:

"Q. We are investigating in this case the relative cost of handling and transporting car load and less than car load freight. We have heretofore had evidence with respect to the cost of depot and transfer handling of less than car load freight. I do not wish to direct your attention in this examination to that, but to ask you whether, aside from the extra cost of depot and transfer handling of less than car load freight, there is a difference between the cost of transporting L. C. L. and C. L. freight?

A. There is a material difference in the cost of moving general merchandise known as less than car load freight, as compared with what we call car load freight.

Q. Please state in a general way in what that difference consists?

A. The difference consists in hauling a great deal more car weight in proportion to the revenue weight on the L. C. L. business as compared with the C. L. business.

Q. On what character of trains is L. C. L. freight carried?

A. Generally on merchandise trains, what are known as merchandise trains, moved on a very much faster schedule than the lower grades of freight. This makes it necessary to give merchandise trains proportionately less tonnage, so that increased time can be made.

Q. What is the average tonnage on your road of L. C. L. freight?

A. About five and a half tons per car.

Q. Is it necessary in the operation of your road and in making the various calculations for carrying on your business, to estimate the tonnage of L. C. L. freight; and have you done so?

A. Yes, sir, it is necessary so as to know something about the way to load your trains, and all that kind of thing, to have a general knowledge of the average tonnage per car; and for our own purposes we use the estimate of five tons per car for merchandise.

Q. Is the average of five and a half tons, which you have given, a liberal estimate for L. C. L. freight?

A. I think so, yes, sir.

Q. What is the average tonnage of car load freight?

A. About 22 tons per car.

Q. What is the average weight of the empty cars themselves?

A. About 18 tons.

Q. Can you give us a statement in tons, or percentage, or otherwise, of the extra cost of transporting the same amount of tonnage C. L. and L. C. L. freight; if so, please do so.

A. Taking one thousand gross tons as a train basis, merchandise with an average load of 5½ tons per car, 18 tons as the weight of the car, that is a total of 23½ tons per car. A train of 1,000 gross tons would be 43 cars. Those 43 cars would contain 236 tons of revenue freight. The weight of the cars would be 764 tons. Only 23.6 per cent. of the total tonnage would be revenue freight. Using the same basis of 1,000 gross tons on car load freight, the average load of 22 tons and the weight of the car at 18 tons, making a total of 40 tons, a train of 1,000 gross tons would consist of 25 cars. 550 tons would be revenue freight; 450 tons would be the weight of the cars; or 55 per cent. of the total tonnage would

be revenue freight. Using this same basis of 1,000 tons as a train load basis, there would be 125 per cent. more revenue freight in a train of car load freight than in the train of merchandise. Using this same basis again of 1,000 tons as a train load, it takes 25 cars to handle 550 tons of car load freight. It would take 100 cars to handle the same weight of general merchandise.

Q. Then according to your statement it requires in point of investment in equipment four times as much in the case of L. C. L. on an average than in C. L.; is that correct?

A. Yes, sir, in round figures.

Q. How about the wear and tear and depreciation, and cost of lubrication?

A. Well, we would have just four times as much invested in equipment; four times as much depreciation; four times the lubrication, and so forth, to carry the same amount of general merchandise as we would car load freight.

Q. How about the comparative cost of the train service in men and other items?

A. Well, that differs with the conditions. I don't hardly know how to answer that except in a general way. The expense depends almost entirely on the speed that is to be made. To answer the question I will give you a few comparisons. I made a memorandum of what we call—I made a memorandum of three, what we call, high class trains that handle merchandise and high class freight, and are run fast. One of these trains between Chicago and Cincinnati hauls 650 tons. The same class of engines on a slow train would haul 950 tons, or an increase of 46 per cent. Another high class train, from Indianapolis to Cleveland, hauls 700 tons. The same class of engine on a slow train would haul 1,050 tons, or an increase of 50 per cent. Another high class train, from Cleveland to St. Louis, hauls 1,150 tons. The same class of an engine on a slow train would haul 1,460 tons, or an increase of 26 per cent. Now the difference in the rating of the engines on those several trains is covered in part by the speed that it is necessary to run the train. I have shown here, in one instance, that the difference is 50 per cent.; in another instance, only 26 per cent. I would say that a fair general average would probably be, that the slow train would haul

one third more than the average merchandise or high class train.

Q. Do you mean one third more of gross weight including the car and contents?

A. Yes, sir, I am dealing with gross in this case entirely.

Q. Do you pay your train men by time, or by the mile?

A. By the mile. There are isolated exceptions to this, but the general practise is by the mile.

Q. Does that include the engineers?

A. Yes, sir.

Q. Does it also include the firemen and brakemen?

A. Yes, sir.

Q. You have used the term, "slow train." What is a slow train?

A. Slow train is made up of general car load freight that does not require such quick movement, such as coal, grain, lumber, hay, iron, and general commodities handled by car loads.

Q. It includes car load business—covers car load business?

A. Yes, sir. There is some car load business, however, that we handle on the fast trains, such as perishable freight, live stock, and that kind of thing; but that is not handled in the high class trains.

Q. Well, a car load of soap, would that be handled on slow trains?

A. Yes, sir, that would be considered a low grade of freight.

Q. What is the occasion or necessity for handling L. C. L. freight on the fast trains?

A. Well, sir, I suppose there are two reasons for that; the first is that the shipping public demand fast service on the high grades of freight, second, competition has made high class service necessary.

Q. The traffic department is distinct from your department is it?

A. Yes, sir.

Q. Are you required or expected by the Traffic Department to forward L. C. L. freight on those fast trains; is that the custom and the practice?

A. Yes, sir.

Q. Do the fast trains that carry L. C. L. freight have schedule times?

A. Yes, sir, just the same as passenger trains."

V.

The testimony as to the extra cost of L. C. L. business is confirmed by the findings of the Interstate Commerce Commission in other cases.

The present difference between L. C. L. and C. L. rates on soap between Cincinnati and Chicago, or Cincinnati and St. Louis, or New York and Chicago is 33 1-3 per cent. of the C. L. rate. In other words the extra charge for L.C.L. service is only 33 1-3 per cent. of the C. L. rate. That is not unreasonable. It is not one half the actual cost. The Interstate Commerce Commission has found after careful investigation that the extra cost of transportation alone is "from 47 to 100 per cent." and that "the average difference in earnings per car from an average load of car load freight and an average load of less than car load freight is not far from 100 per cent." They so held in Thurber vs. New York Central & Hudson River R. R. Co. et al., 2 Int. Com. Rep. 742, 752; 3 I. C. C. R. 473, 502, where the Commission said:

"The differences in classification of car loads of one kind of freight to one destination, and less quantities of different kinds to various destinations, are based on the well known fact of a difference in the cost of service by the carrier. This fact, and the extent of the difference, were probably never so fully demonstrated by tests on different roads, and at different points, as in these cases. Exact average differences, or the difference upon any particular kind of traffic, have not been shown, and perhaps are not possible, but approximately the difference in cost of transportation as shown by testimony ranges from 47 per cent. to 100 per cent. exclusive of handling, loading and delivering, less than car load freights and transfers en route, and the average difference in earnings

per car from an average load of car load freight and an average load of less than car load freight is not far from 100 per cent. These averages are varied in both directions by differing conditions and volume of business at different points, but the facts show in a general way substantial grounds for a difference in classification."

In Business Men's League vs. Atchison, Topeka & Santa Fe Ry. Co., 9 Int. Com. Rep., 318, 345, the Commission said:

"It is obvious that the actual expense of handling less than car load business is greater than it is for car load traffic. The car load is generally loaded and unloaded by the shipper, while the less than car load is handled at both ends by the carrier. In the former case there is but one entry for each car load, while in the latter there are from 25 to 150 in case of each car which must be extended upon all the books where a minute of the transaction is entered. The expense of providing station facilities is very much greater in case of less than car load than car load business.

In addition to the difference in expense at the terminals, the actual cost of hauling is much more in the less than car load than in the car load. A crew of train men averages more miles in doing car load business than when distributing less than car load traffic from station to station. The loading of car loads is very much heavier than the less than car load, from which it results, first, that less non-paying weight is hauled in car load traffic, and second, that the car is more nearly used up to its capacity. A freight car weighs, approximately, 12 tons. If that car be loaded with 6 tons of freight, its movement involves the handling of 18 tons, of which but 6 tons are paying freight, while if the car were loaded with 16 tons, there would be a movement of 28 tons, of which 16 tons are paying freight. Assuming that the average load of less than car load business is 6 tons, and the average load of car load business 16 tons, and that the cost of hauling per ton is the same in both cases, a rate of $1.00 on car load would be about equivalent to $1.75 upon less than car load. But the car mileage is the same in both cases, and the cost

of movement does not increase in proportion as the weight of the car load increases, so that upon this basis of loading there would actually be a greater difference in cost of service."

In Chicago, Milwaukee and St. Paul Railway Company vs. Tompkins, 176 U. S. 167, Mr. Justice Brewer said, p. 178:

"Beyond the figures given from the books of the company of the actual cost of doing the total business of the company there was testimony of several experts as to the relative cost of doing local and through business. Such testimony is not to be disregarded simply because it can not demonstrate by figures the exact amount or per cent. of the extra cost. It is obvious on a little reflection that the cost of moving local freight is greater than that of moving through freight, and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy. Take a single line of 100 miles with 10 stations. One train starts from one terminus with through freight and goes to the other without stop. A second train starts with freight for each intermediate station. The mileage is the same. The amount of freight hauled per mile may be the same, but the time taken by the one is greater than that taken by the other. Additional fuel is consumed at each station where there is a stop. The wear and tear of the locomotive and cars from the increased stops and in shifting cars from main to side tracks is greater; there are the wages of the employes at the intermediate stations, the cost of insurance, and these elements are so varying and uncertain that it would seem quite out of reach to make any accurate comparison of the relative cost. And if this is true when there are two separate trains, it is more so when the same train carries both local and through freight. It is impossible to distribute between the two the relative cost of carriage. Yet that there is a difference is manifest, and upon such difference the opinion of experts familiar with railroad business is competent testimony, and can not be disregarded."

VI.

The petition of the Procter & Gamble Company did not charge unlawful discrimination against persons or localities.

Section 3 of the act to regulate commerce makes it unlawful for a carrier to "give any undue or unreasonable preference or advantage (1) to any particular person, company, firm, corporation, or (2) locality, or (3) any particular description of traffic." The only violation of this section charged in the petition of the Procter & Gamble Company, with respect to soap in less than car loads was that the defendants by the reclassification of 1900 "have subjected and do thereby subject said traffic in common soap in less than car load lots to an undue and unreasonable prejudice and disadvantage in its commercial competition with common soap in car load lots" (R. 10). There was no charge of discrimination against any particular person, company, firm or corporation, or against any locality, but only against a "particular description of traffic," to-wit, "traffic in common soap in less than car load lots," and the discrimination complained of was that that "particular description of traffic" was subjected "to an undue and unreasonable prejudice and disadvantage in its commercial competition with common soap in car load lots." The decision of the circuit court that "the change [of 1900] resulted in unlawful discrimination between shippers" (R. 1092), was therefore unwarranted. No such charge had been preferred against the defendants before the Commission. New charges can not be made for the first time in the circuit court. Its jurisdiction under section 16 is limited to an examination of the correctness of the order of the Commission, and the jurisdiction of the Commission is confined to a determination of the particular violations of the act charged by the party complaining in the written petition which he is required to file under section 13.

The allegation of the bill of complaint filed in the circuit court that the change in classification resulted in unlawful discrimination and prejudice "against localities in Official Classification territory, wherein commodities are produced and transported, and against producers, shippers, dealers and consumers in said territory" (R. 5), stated no ground for relief, because it appeared from the petition of the Procter & Gamble Company before the Interstate Commerce Commission, a copy of which was attached to the bill as exhibit A, that no such discrimination was charged, and by the report of the Commission, a copy of which was attached to the bill as exhibit H, that no such discrimination had been found as a fact.

The foregoing statement applies with equal force to the suggestion in the report of the Commission (R. 75) that Rule 10, Subdivision B-2 of Official Classification (allowing mixed car loads of provisions and other articles taking fifth class) may discriminate against the manufacturer who is mainly engaged in manufacturing and selling soap in favor of meat packers who also deal in soap. No such discrimination is charged in the petition of the Procter & Gamble Company, nor is there any sufficient finding of facts to support an order on that ground, under section 3.

But the matter has become immaterial because Gill's testimony shows that "it [Rule 10, Subdivision B-2] was abrogated on January 1, 1903, from the official classification, some time before the report and opinion of the Commission in these cases was rendered." R. 238.

Rule 10, Subdivision B-2, while it was in force, had no legitimate bearing upon the question whether soap in less than car load lots was properly put in 20 per cent. less than third class. If Rule 10 gave meat packers, who were also soap makers, an undue advantage, the remedy was to set it aside, instead of disturbing the just and true and long estab-

lished relation between soap in car loads and soap in less than car loads.

VII.

The evidence did not show unlawful discrimination against persons or localities.

The report of the Commission, after pointing out that the change in the classification of L. C. L. soap from fourth class to 20 per cent. below third class raised the rate from Cincinnati to Boston four cents, while it did not raise the rate at all between New York and Boston, said:

"These differences are due to variations in the scales of rates prevailing in the different sections. The 20 per cent. less than third class rating for less than car loads applies to all shippers of L. C. L. lots of soap throughout the entire territory, but it increases some rates more than others, and leaves some of them as they were before it was adopted. When, for example, under the application of that rule, the rate from Cincinnati to Boston is increased four cents, and the rate from New York to Boston remains the same as compared with the fourth class rates formerly in effect, it is plain that this method of determining rates upon a percentage basis operates unequally upon the different shippers of L. C. L. quantities in that territory." R. 72.

The Commission also said:

"The new class inserted in the Official Classification on March 10, 1900, whereby 20 per cent. less than third class but not lower than fourth class rates are provided for less than car load soap and numerous other articles, operates with respect of soap, as above found in this case, to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advances in less degree, or not at all, the less than car load rates paid by soap shippers in New York City and other parts of the East. In other words, the application of a fixed percentage to varying and different rates has the effect

of changing the relation of rates which before prevailed on shipments made by complainant and its competitors in the East to common territory." R. 82.

This was far from the finding as fact that the new classification gave any undue or unreasonable preference or advantage to any particular person or locality, in violation of section 3 of the act to regulate commerce, and was not so intended. It is not such a finding of fact as is "prima facie evidence of the matters therein stated," under section 16.

The whole evidence shows clearly that under Official Classification No. 20 eastern dealers have no advantage over western dealers in the matter of L. C. L. rates. Those rates are in fact less per mile out of Cincinnati, and elsewhere in Central Freight Association territory, than out of New York. The Cincinnati dealer can distribute his soap in less than car loads under Official Classification No. 20 to a greater distance for the same amount of freight money than the New York dealer, except to a few points affected by water competition. This is illustrated by the following tables in which the rates given are 20 per cent. less than third class:

Table 1.

From Cincinnati to	Miles.	Rate in cents.
Pittsburgh,	318	21
Ashtabula,	312	20
St. Louis,	343	20
Cleveland,	263	18½
Detroit,	262	19½
Parkersburg,	195	18
Vincennes,	192	18
Terre Haute,	183	18
St. James	178	18
Newcomerstown,	203	18
Conesville	183	18

Sonora,	182	18
Hyatts,	180	18
Lawrenceville,	211	18
Worthington	182	18
Paris,	202	18
Monticello,	209	18
Guernsey,	214	18
Chicago,	305	20
Grand Rapids,	308	22½
Peoria,	321	20
Nottingham,	292	20

Table 2.

From New York to	Miles.	Rate in cents.
Rochester, N. H.,	313	23
Portland,	348	23
Lowell,	261	22
Nashua, N. H.,	272	22
Baltimore,	187	18
Worcester,	198	20
Attleboro,	200	20
Scranton,	145	18
White Haven,	144	18
Wilkesbarre,	176	18
East Branch,	150	18
Parksville,	124	18
Lordville,	153	18
Goldboro,	123	18
Binghampton,	206	20
Sidney,	205	20
Niantic,	150	20
East Greenwich,	175	20
Herkimer,	229	17(canal rate)
Brighton,	134	18
Portsmouth, N. H.,	290	23

Take the first items in each of the foregoing tables for illustration. It appears from them that a Cincinnati dealer can ship 100 pounds of soap L. C. L. to Pittsburgh, a distance of 318 miles, for 21 cents, while the New York dealer must pay 23 cents for shipping it 313 miles to Rochester, N. H. A Cincinnati dealer can ship 100 pounds of soap L. C. L. to St. Louis, a distance of 343 miles, for 20 cents, while the New York dealer must pay 23 cents for shipping the same box 348 miles, to Portland, and so on.

Mr. Gill's testimony taken in the circuit court shows that the rates for L. C. L. soap in the territory tributary to New York are as high, and in most instances higher, for the same distance, as the rates out of Cincinnati and in the Middle West, notwithstanding the advantage New York shippers have on account of the water competition furnished by Long Island Sound steamers and Hudson River boats. Mr. Gill compares the actual rates out of New York for L. C. L. soap under Official Classification No. 20, with the rates in Central Freight Association territory. Rec. 234-237. His conclusion is thus stated at p. 237:

"Q. So that even taking the Pennsylvania railroad with the water competition, the soap manufacturer in New York City pays as great or a greater rate than the soap manufacturer in Cincinnati?

A. Per mile, yes, sir."

The following table compiles his testimony concerning L. C. L. soap rates in Central Freight Association territory, under Official Classification No. 20, compared with those out of New York on the Erie railroad, which is not affected by water competition. The table shows the present L. C. L. soap rates in C. F. A. territory, the increase that was effected in them by Official Classification No. 20, the present rates on the Erie railroad, and the increase that was effected in them by Official Classification No. 20.

Distance in Miles.	Rates in C.F.A. Territory.	Rates on Erie R. R.	Increase made by Official Classification No. 20 in C. F. A. Territory.	Increase made by Official Classification No. 20 on Erie R.R.
	cents.	cents.	cents.	cents.
50	8.5	15	none	1
65	10.5	15	½	1
75	12	17	1.5	1
100	15	18	2.5	2
150	16	18	2.5	1
200	17.5	20	2.5	2
300	20	20	3	2
400	23	22	3	3
450	24	22	3	3

The foregoing comparison shows that the soap manufacturer in Central Freight Association territory is at no disadvantage in the matter of L. C. L. rates as compared with his New York competitor.

It is true that in some instances the advance in rates made on the New York shipper by Classification No. 20, is slightly less than the advance made on the Western shipper, but it ought to be so, because the Eastern rate is still higher than the Western rate. For instance for a distance of 100 miles the advance in C. F. A. territory was from 12½ cents to 15 cents (an advance of 2½ cents), while on the Erie railroad it was from 16 cents to 18 cents (an advance of 2 cents). But the new rate is still 3 cents in favor of the Western manufacturer, who pays 15 cents as against 18 cents for the same distance on the Erie railroad.

Mr. Gill was asked to compare L. C. L. soap rates out of New York and Chicago to competitive points. He answered as follows, p. 237:

"Pittsburgh would be a fair illustration as being about equi-distant from New York and from Chicago, Chicago being a very large soap manufacturing point as well as New York. The present rate on soap L. C. L. Chicago to Pitts-

burgh is 24 cents per one hundred pounds; that was an advance over the old fourth class rate of 3 cents per one hundred pounds. The present L. C. L. rate on soap from New York to Pittsburgh is also 24 cents, the same as from Chicago to Pittsburgh, and the advance over the old fourth class rate is also 3 cents per one hundred pounds. With reference to soap in car loads classified at fifth class, the rates from New York and Chicago to Pittsburgh are the same, that is to say, 18 cents per one hundred pounds, being an advance of 3 cents per one hundred pounds."

But suppose the railroad rates for soap in less than car loads out of New York in certain directions, where they have water competition, are less than those out of Cincinnati. What has that to do with the reasonableness of the extra charge the defendants make for handling soap L. C. L.? The extra cost of depot and transfer handling of L. C. L. merchandise in the Middle West, and the extra cost of transporting it, is not affected by the fact that Sound steamers and Hudson river boats compete with the railroads in carrying freight in the territory tributary to New York.

VIII.

If the classification of soap in less than car loads ought to be based upon its relation to other articles in less than car loads, as the circuit court held, and not upon its relation to soap in car loads, no violation of the act to regulate commerce results from putting soap L. C. L. in 20 per cent. below third class.

While the circuit court held that "the classification of soap for carriage in less than car load lots should be based upon its relation to other articles for carriage in less than car load lots, and not upon its relation to soap for carriage in car load lots" (R. 1091), the court did not point out how or in what way the principle was disregarded by placing common soap

in less than car loads in 20 per cent. below third class. It did not mention any L. C. L. articles which should go in the same class with L. C. L. soap which were improperly disassociated by putting common soap L. C. L. in the class to which the defendants have assigned it in Classification No. 20.

Gill's testimony gives a list of forty articles in 20 per cent. less than third class, L. C. L. which he says are of similar character to common soap L. C. L. The following is his testimony on that subject, R. 238:

Q. The opinion of the Commission with respect to C. L. soap refers to the relation of soap and other articles that are put in 5th class C. L. What have you to say with respect to a similar comparison between soap L. C. L. under Rule 26 and other articles covered by that Rule in official classification?

A. If the views of the Commission are sound with reference to the comparison in car loads, I do not see why they should not apply equally upon the comparison with L. C. L. articles rated the same in less than car loads as soap. That is to say, articles of similar character in bulk and weight, comprising articles of food consumption, groceries, etc., on which the relation of rates has not only been the same in car loads but in less than car loads. I have a list of those articles here, some 40 in number, and it appears to me that it would be absolutely unjust to reduce soap in less than car loads rated Rule 26 to 4th class, and leave other articles now rated the same as soap, both L. C. L. and C. L. where they are, especially in view of the comparison referred to in the Commission's Report where comparison seems to be the controlling element.

Q. Please give us the list of the articles to which you refer as being analogous to soap covered by Rule 26, Official Classification No. 20?

A. Apple or fruit butter, axle grease, candies, canned fish, canned vegetables, canned soups, and broths, coffee, cracker meal, epsom salts, fish cured in packages, grease, hoof stuffing, lard, concentrated lye, cured meats in packages, mince meats, molasses in cans, oysters in cans, flour paste, potato

flour, preserves in packages, soft soap, soap extracts, soap powders, caustic soda in cans, starch, sugar, syrup in cans, tallow, tomatoes canned, and various items of vegetables and garden roots, washing crystals and washing powder.

Q. Are those articles in your opinion analogous to soap under the proper classification of L. C. L. soap?

A. They are and have been rated similarly, I think, all of them, both in less than car loads and in car loads.

The Commission itself in determining the proper classification of common soap in car loads, especially compares it with articles all of which are in 20 per cent. below third class in less than car loads, viz: coffee, sugar, smoked and salt fish (R. 53 and 65) and says further:

"The present less than car load rating of 20 per cent. less than third class is, however, applied to numerous articles which take fifth class in car loads, among them coffee, sugar, fish (smoked or canned), and canned fruits and vegetables," R. 69, 70.

IX.

The evidence does not show that defendants' rates for the carriage of common soap in less than car loads are unjust or unreasonable.

We have shown that they are not unreasonable as compared with car load rates (which the Commission hold to be reasonable), and there is no finding in the report of the Commission that they are unjust or unreasonable "in and of themselves," to use Mr. Justice White's expression in 181 U. S. 26. The nearest approach is the following:

"The difference of 15 cents between fifth class and third class, which was in effect as between car load and less than car load shipments from January 1 to March 10, 1900, would plainly be excessive, and the present difference, which varies according to a given per cent. as applied to different scales of rates, appears to be inequitable and unjust, and the fact is so found," R. 76.

That is not a finding that any rate or rates of the defendants for carrying soap L. C. L. are unjust or unreasonable per se, but that the difference between car load rates and less than car load rates is inequitable and unjust. That claim is disposed of by the admission in the petition of the Procter & Gamble Company that the very difference between fifth class and 20 per cent. less than third class is the proper difference between soap in car loads and less than car loads, and by the additional evidence taken in the circuit court and discussed under the third, fourth and fifth heads of this brief, which establishes conclusively that the difference between C. L. and L. C. L. rates is less than the actual cost of the extra service.

In its "statement of views" (R. 82) the Commission says that "fourth class rates for less than car loads were allowed by carriers in official classification territory for ten or more years prior to 1891, when they charged fifth class rates for car loads, and they also remained in effect during all the time from 1891 to 1900, when car load soap was sixth class." They say: "Soap in less than car loads, therefore, always had fourth class rates until January 1, 1900. A presumption that such rates were reasonable arises from the voluntary action of the carriers in keeping these rates in effect during such a long period; and that presumption has not been overcome, in our judgment, by the evidence presented in this case."

But the evidence before the Commission shows that the cost of operating and maintaining railroads was greatly increased about 1900 on account of increase in the cost of labor and rise in the price of material and supplies, and the answers of the defendants before the Interstate Commerce Commission alleged that Official Classification No. 20 was "the result of a general revision of former classifications made for the purpose of meeting an imperative demand for increased revenue, rendered necessary by reason of increase in the cost of operating and maintaining respondents' railroads." R. 14.

The extent of the increase is shown in the testimony of the following witnesses before the Commission:

G. L. Potter, General Superintendent of Motive Power of the Pennsylvania Lines West of Pittsburgh, R. 503-528. He presented a statement which is filed as Exhibit 20 (R. 743), showing an increase in the price of locomotives of 40.5 per cent. in 1900 over 1899, and of 39.1 per cent. over 1898. His Exhibit No. 21 (R. 743) shows an increase in cost of freight cars in 1900 of from 40 to 50 per cent. over 1899 and 1898. His Exhibit No. 22 (R. 744) shows in detail the large percentage of increase in the cost of the principal items of material. His Exhibit No. 23 (R. 746) shows an average increase in the cost of freight car equipment of 14.2 per cent. in 1900 over 1899, and of 27.6 per cent. over 1898. His Exhibit No. 24 (R. 746) shows an increase in the price of steel rails of 83.3 per cent. in 1900 over 1899, and of 73.7 per cent. over 1898. His Exhibit No. 25 (R. 747) shows an increase in the price of coal of 29.4 per cent. in 1900 over 1899, of 37.5 per cent. over 1898, and of 46.7 per cent. over 1897.

F. D. Casanave, General Superintendent of Motive Power of the Pennsylvania Railroad Company, R. 528-560. His Exhibit No. 26 (R. 747) shows the percentage of increase in 1900 over 1898 and 1899 of the cost of the principal items of material used in freight car construction, ranging from 16.2 per cent. increase in the cost of oak to 194.7 per cent. increase in the cost of steel axles. His Exhibit No. 26 C-1 (R. 748) shows the percentage of increase in 1900 over 1898 and 1899, of the cost of freight equipment cars, ranging from 34.7 per cent. to 52.3 per cent. His statement, Exhibit No. 27 (R. 749) shows the percentage of increase in 1900 over 1898 and 1899 in the cost of the principal items of material used in locomotive construction ranging from 24.3 per cent. for oak, to 201.7 per cent. for bloom steel. His statement,

Exhibit No. 27A-1 (R. 750) shows the percentage of increase for 1900 in the cost of new locomotives over 1898 and 1899, ranging from 24.3 per cent. to 40.4 per cent. His statement, Exhibit No. 27A-2 (R. 750) shows the building of 128 locomotives on the programme of 1900 costing $1,798,352, at an increased cost of 32 per cent. His statement, Exhibit No. 28 (R. 751) shows the percentage of increase in the cost of freight car repairs for 1900 over 1897, 1898 and 1899, ranging from 32.9 per cent. to 37.6 per cent. His statement, Exhibit No. 29 (R. 752) shows an increase in the cost of maintenance of equipment in 1900 of 14.4 per cent. over 1897, of 21.1 per cent. over 1898 and of 24.5 per cent. over 1899. His statement, Exhibit No. 30 (R. 752) shows the percentage of increase in the cost of locomotive repairs and of locomotive fuel.

A. H. McLeod, Traffic Manager of the C. H. & D. Ry. Co. R. 560-630. He testified that the cost of coal was 19 cents per ton more in 1900 than in 1899, involving an additional outlay for his company of $5,700 per month on that account, and that the increased cost of mining alone was 14 cents a ton. Steel rails increased from $17 per ton in 1897 and 1898 to $34 in 1899 and $35 in 1900.

W. H. Coverdale, Assistant Engineer of the Pennsylvania Company, in charge of construction. R. 630-640. He testified that the price of labor had increased from $1.15 per day in 1898 to $1.50 in 1900, and that the price of grading had increased 30 per cent. on account of the increase in the cost of labor. There was an increase in the cost of bridges of 40 per cent.

W. C. Cushing, Engineer, M. of W. Pittsburgh Division of the Pennsylvania Lines of the Southwest System (R. 640), gives detailed statements of the increase in labor and material in his department.

John B. Brittain, Special Agent of the Accounting De-

partment of the Pennsylvania Lines West of Pittsburgh, R. 645-660. His statement, Exhibit No. 40 (R. 754) shows the increased ratio of expenses to earnings.

Thomas H. Johnson, Chief Engineer of the P. C. C. & St. L. Ry. Co., R. 660, et seq. gives in detail the increased expense of his department.

Archibald Fries, Assistant General Freight Agent of the B. & O. S. W., R. 675-714. His exhibits, Nos. 46 to 56 inclusive, are full and complete.

In the face of such an array of testimony as to changed conditions no inference could be drawn or presumption indulged from the satisfaction of the railroads with rates under former conditions. The Commission, if it had power to fix rates, might differ with the boards of directors of the railroads as to the amount of increase in rates that was necessary to meet increased cost of maintenance and operation, but there was no such investigation; the whole subject was dismissed with an erroneous application of the doctrine of presumptions. It is true that a presumption arose that the former rates were reasonable from the voluntary action of the railroads in adopting them. But the fact (thus proved by presumption) that they were reasonable, was not proof or evidence to prove, that they were now adequate under new and different conditions.

The Circuit Court said, R. 1090:

"Testimony taken since the commencement of this suit shows that the cost of service for handling and carrying freight in less than car load lots greatly exceeds the cost of handling and carrying it in car load lots, but it is not shown that as between the two the relative cost of handling and carrying ever increased one way or the other either before or since the new classification was made; and the evidence, therefore, is not sufficient to rebut the presumption that the original classification of common or laundry soap was and is

reasonable and just, arising from the voluntary maintenance thereof by the defendants for thirteen years prior to the change complained of.'

The court overlooked the abundant testimony before the Commission to show the recent increase in the cost of labor, which is one of the principal items of the expense of handling freight in less than car loads, and the additional testimony to the same effect in the circuit court. John E. Loomis, R. 219, M. W. Pierce, R. 223-4, and C. T. Scaife, R. 227, testified that the cost of handling less than car load freight in Chicago had increased twenty per cent. on account of the advance in the pay of clerks and laborers. Gill testified that the cost of terminal service had increased on account of the increase of wages. R. 238. It is a matter of common knowledge that there was a great increase in the cost of labor and material.

No argument against an increase in the rates for L.C.L.soap can be justly drawn from the fact that the railroads put L. C. L. soap in fourth class from 1891 to 1900. They put it in fourth class during those years because C. L. soap was in sixth class by order of the Commission, and the railroads recognized that the difference between fourth class and sixth class was the proper difference between C. L. and L. C. L. soap. That is what they say now. It is the very difference recognized in Classification No. 20. The difference between sixth class C. L. and fourth class L. C. L., which prevailed formerly, is the precise difference which now exists between fifth class C. L. and 20 per cent. less than third class L. C. L., under Classification No. 20.

What the railroads did in classifying L. C. L. soap prior to 1891 (16 years ago) was hardly relevant. But it is misleading to say that they put common soap L. C. L. in fourth class and C. L. soap in fifth class. They divided soap into two classes, putting fancy, toilet, and castile soap L. C. L. in

second class (R. 238, 249, 250), which was doubtless a consideration for putting common soap L. C. L. in fourth class. Gill testifies that fancy, castile and toilet soap "represented 25 to 35 per cent. of the whole." R. 250.

The Commission might have said that C. L. soap ought not to have been raised to fifth class, because it was in sixth class from 1891 to 1900. They held that fact "insufficient of itself to sustain complainant's contention that fifth class rates for car load soap are unreasonable." They said it was a question "of classification; that is of relative rates."

It remains to notice the comparative tables of tonnage and earnings filed by the complainant. R. 213-215. The "net earnings" shown by those tables are not net earnings to stockholders. In railroad parlance "net earnings" are the gross earnings after deducting operating expenses. Fixed charges and capital construction come out of net earnings. Counsel in the circuit court compared the net earnings of the Pennsylvania Railroad Company in 1904 with its net earnings in 1899. But the net earnings of 1904 were earnings on a largely increased investment represented by stock and bonds which the company put out in the mean time for new equipment, additions to track and road bed, new and larger depots, etc., with which to be able to make those earnings. It is well known that the additions to the capital investment of the railroads on this account during those years were very large. Take the case of the Pennsylvania Railroad Company as an illustration. Its capital stock on December 31, 1899, was $129,305,500. (Poor's Manual for 1900, p. 682). On December 31, 1904, it was $301,285,650. (Manual of Statistics for 1905, p. 248), an increase of $171,980,150.

Out of the net earnings shown on the statements referred to large sums were taken to meet extraordinary charges for betterments charged direct to income. A statement which stops with "net earnings," and does not show how the net earnings are applied, proves nothing.

If we take the statements of tonnage (R. 213) we find, by comparing the figures for the years 1900 and 1904, after Official Classification No. 20 went into effect, with those for the years 1891 and 1895, before it went into effect, that the increase in the volume of business, is in greater proportion than the increase in net earnings. For instance, the increase in gross earnings of the P. C. C. & St. L. Ry. Co. for 1904, as compared with 1895, is about 66 per cent., whereas the increase in operating expenses is 77 per cent., and the increase in net earnings only 31 per cent. Substantially the same comparison is shown in the case of the Pennsylvania Railroad Company.

But the fact that the Commission has found fifth class rates to be reasonable for soap in car loads, taken in connection with the uncontroverted proof as to the extra cost of handling it in less than car loads, and the admissions of the original petition as to the proper difference in rates between the two, seems to make it clear that soap in less than car loads is entitled to rates equal to 20 per cent. less than third class.

The present difference in rates between soap in car loads and soap in less than car loads has been in force for sixteen years, nine years before Official Classification No. 20 was promulgated and seven years since then, and is not objected to by any shipper. The Procter & Gamble Company did not complain of it in their petition to the Interstate Commerce Commission. On the contrary they insisted that C. L. soap should be in sixth class and L. C. L. soap in fourth class, "so as to maintain the proper relation and difference of rates between car load and less than car load lots" (R. 12). We have seen that the relation between fourth class and sixth class, which the Procter & Gamble Company thus insisted upon as "the proper relation and difference of rates between car load and less than car load lots," is the same relation and

difference of 5 cents between Cincinnati and Chicago, and 10 cents between New York and Chicago, that exists between fifth class and 20 per cent. less than third class. We did not go into that relation before the Commission, for no issue was raised with respect to it. We were entitled by the pleadings to assume that if fifth class was held to be proper for soap in car loads, 20 per cent. less than third class would be held proper for soap in less than car loads. The petitioner admitted that that was the proper relation between the two, and the Commission had no authority to make an order against the defendants, in conflict with the petitioner's own admission on that vital subject.

Classification No. 20 at first put L. C. L. soap in third class, which did increase the former relation between C.L. and L. C. L. soap. The soap manufacturers complained and at a conference between them and representatives of the railroads "20 per cent. less than third class was established as a compromise. It gave the shippers a material reduction and the carriers a slight advance in their rates." Gill, R. 233.

Gill testifies that no complaint has ever been made to the Classification Committee that the extra charge which the railroads now make for carrying soap in less than car loads is unjust or unreasonable. (R. 233, 234). Neither the Procter & Gamble Company nor any other manufacturer, dealer or shipper has taken any step to enforce the order of the Commission, nor does it appear that any one has requested the Commission to do so. The primary purpose of the suit seems to be to vindicate its authority.

X.

The order of the Commission was not a lawful order, within the power conferred on it by the act of Congress.

There was no charge in the petition of the Procter & Gamble Company that any particular rate or rates of any

one or more of the defendants was unjust or unreasonable. No rates were specified. The complaint was against a classification and not against a rate or rates. This was so in the nature of things, for it was known, as appears from the report of the Commission (R. 72) that the effect of the change in classification was to leave some L.C.L. rates unchanged and to increase others in varying degrees.

The essential nature of the complaint is illustrated by the character of the order made thereon. No particular rate or rates of one or more of the defendants is enjoined. The order is to cease from charging, for the transportation of common soap in less than car loads, rates in excess of those charged from time to time for the carriage of an indefinite number of other articles, viz: those which at any time may be "designated as third class in their established freight classification called and known as the Official Classification." R. 83, 84. Such an order is not the exercise of power to prohibit a violation of section 1 of the act.

Classification is a matter of the relation of the subjects of traffic to each other, and the power of the Commission to enjoin a classification must be found and exercised, if at all, under section 3, on proof that the classification complained of works an unlawful discrimination against some "particular description of traffic."

We have discussed the question of discrimination under the first head of this brief.

But it is clear that the Commission would not have had power to make the order involved in this case, even if it had been shown that a classification which put L. C. L. common soap in 20 per cent. less than third class resulted in an unlawful discrimination against that "particular description of traffic," in contravention of section 3. Upon such showing the Commission might perhaps have had power to enjoin the defendants from charging higher rates for interstate ship-

ments of soap in less than car loads, than they charged for sugar or other specified commodities in less than car loads (as between which and soap in less than car loads, an unlawful discrimination was shown), or more than five cents between Cincinnati and Chicago for carrying soap in less than car loads than they charged for soap in car loads, or more than ten cents in excess of the car load rate between New York and Chicago, if it was shown that a larger extra charge between those points was an unlawful discrimination between traffic in soap in less than car loads and traffic therein in car loads. But the Commission did not so limit its order. It made a general sweeping order that the defendants, after June 15, 1903, should never charge for carrying soap in less than car loads, no matter where or under what circumstances or between what points, rates equal to 20 per cent. less than they charged for any commodity whatsoever, either in car loads or less than car loads, then or thereafter "designated as third class in their established freight classification called and known as the Official Classification," R. 84. This was not the exercise of any power conferred upon the Commission within the principles declared by this court in Interstate Commerce Commission vs. Cincinnati, New Orleans & Texas Pacific Railway Company, 167 U. S. 479.

The committee of congress that framed the act to regulate commerce did not intend to give the Commission the power to prescribe or condemn a classification as such. They intended only to give the Commission power to investigate rates for the purpose of determining whether a given rate was reasonable or produced undue discrimination. They said in their report, p. 188:

"The difficulty encountered has been to provide for, or to require, uniformity without especially prescribing the classification which shall be adopted, or without giving a commission authority to establish a classification, which would be equivalent to authorizing such commission to fix rates."

It will be noticed that the rates enjoined are not rates equal to a certain per cent. above fourth class, but rates equal to 20 per cent. less than third class, although no comparison between common soap in less than car loads and commodities in third class was made in the testimony or suggested in the petition of the Procter & Gamble Company. The Commission had no evidence before them on that subject. The prayer of the Procter & Gamble Company was to put common soap L. C. L. in fourth class and what comparison was made by the witnesses was between soap and the commodities in fourth class. The evidence does not contain a list of the commodities in third class.

What would become of the order if the defendants, or some of them, should increase the classes to eight or ten or twelve or reduce them to two or three, so that the third class of 1903 should become substantially the first or second or fourth or fifth class of 1897, or if the defendants should abolish an "established freight classification called and known as the Official Classification?" Would they be in contempt of the Commission or of the circuit court whose decree, following the terms of the order, does not enjoin the defendants from charging rates equal to 20 per cent. less than those charged for any particular commodities, or for the commodities then in third class, but rates, "equal to 20 per cent. less than the rates fixed by them for the transportation of articles designated as third class in their established freight classification, called and known as the "Official Classification" (R. 1094)?

We have assumed that the order was intended to enjoin rates equal to 20 per cent. less than rates fixed for articles then or thereafter designated as third class in the Official Classification. The decree of the circuit court, which was not entered until November 25, 1905, seems to so construe the order. If it was intended to enjoin rates equal to 20 per cent. less than the rates for articles that were in third class on

January 1, 1900, when Official Classification No. 20 became effective, or that were in third class on the day the order was made, it becomes even more anomalous if possible, because it would fix perpetual rates for soap in less than car loads at 20 per cent. less than the rates for particular commodities, without reference to future conditions or circumstances affecting the one or the other.

CONCLUSION.

In Interstate Commerce Commission vs. Cincinnati, New Orleans & Texas Pacific Railway Company, 167 U. S. 479, 493, and in earlier and later cases, this court has quoted and adopted the view expressed by the late Justice Jackson, as circuit judge, in the case of The Interstate Commerce Commission vs. Baltimore & Ohio Railroad Company, 43 Fed. 37, the judgment in which was affirmed by this court in 145 U. S. 263:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits."

We respectfully submit that the decree of the circuit court should be reversed and the bill dismissed.

LAWRENCE MAXWELL, JR.,
EDWARD COLSTON,
Counsel for the Appellants.

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Supreme Court of the United States,

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, et al., *Appellants*,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Tables showing rates, on less than car loads, out of New York City and out of Cincinnati to points named.
Comparison of rates per mile out of New York City with rates per mile out of Cincinnati.

THE BARCLAY PRINTING CO., Strobridge Building, 108-118 W. Canal St., Cincinnati, O.

Supreme Court of the United States,

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, et al., *Appellants*,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Table No. 1.

Showing rates out of New York City to points named, on less than car loads. Compilation made from Procter & Gamble plat put in evidence before Commission. (See R. 741.)

NEW YORK CITY TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Port Chester	25	8	7	7
Fairfield	50	10	8	8
New Haven	74	12	10	10
Westbrook	102	14	12	12
Niantic	150	22	20	20
New London	125	14	12	12
E. Greenwich	175	22	20	20
Attleboro	200	22	20	20
Boston	233	16	16	16
Lowell	261	25	22	22
Nashua	272	25	22	22
Portsmouth	290	26	23	23
Rochester, N. H.	313	26	23	23
Portland	348	26	23	23

NEW YORK CITY TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Springfield	136	14	12	12
Worcester	198	22	20	20
Greenfield	171	17	15	15
N. Adams	209	17	15	15
Tarrytown	27	10	9	9
Garrison	52	11	10	10
Poughkeepsie	76	13	11	11
Tivoli	100	14	12	12
Stuyvesant	126	14	13	13
Albany	144	14	13	13
Amsterdam	177	19	16	16
Palatine Bridge	200	19	16	16
Herkimer	229	21	17	17
W. Nyack	25	11	10	10
Cornwall	52	11	10	10
Rock Tavern	65	15	12	12
Mechanictown	75	18	14	13
Ellenville	100	20	16	14
Parkesville	124	23	18	17
E. Branch	150	23	18	17
Walton	179	25	20	18
Sidney	205	25	20	18
Allendale	26	12	10	10
Monroe	50	15	12	11
Otisville	76	19	15	14
Port Jervis	88	19	15	14
Lackawaxen	111	20	16	15
Coketon	131	20	16	15
Lordville	153	23	18	17
Deposit	177	23	18	17
Binghampton	206	25	20	18
Boonton	30	13	10	10
Waterloo	51	15	12	12
Bridgeville	75	19	15	14

NEW YORK CITY TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Stroudsburg	92	20	16	15
Goldsboro	123	23	18	17
Scranton	145	23	18	17
Foster	172	23	18	17
Elizabeth	13	7	6	6
Red Bank	39	13	10	10
Lakehurst	67	15	12	12
Winslow Jct.	105	15	12	12
Bridgeton	134	22	18	18
Bayside	144	22	18	18
Metuchen	26	9	7½	7½
Princeton	50	14	11	11
Torresdale	75	15	12	12
Philadelphia	91	15	12	12
Wilmington	117	19	15	14
Newark Centre	136	22	18	17
Perryville	150	22	18	17
Baltimore	187	23	18	18
Washington	220	25	20	20
Oak Tree	25	9	7½	7½
Flemington City	51	15	12	12
Bethlehem	89	17	14	14
Allentown	94	18	15	15
Slatington	110	20	16	14½
White Haven	144	23	18	17
Wilkes Barre	176	23	18	17
Bound Brook	31	13	10	9
High Bridge	53	15	12	12
Easton	74	15	12	12
Mauch Chunk	119	21	17	16
Totals	9664	1403	1161	1129½
Average per mile		.14517	.12013	.1168

Table No. 2.

Showing rates out of Cincinnati to points named, on less than car loads. Compilation made from Procter & Gamble plat put in evidence before Commission. (See R. 742.)

CINCINNATI TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Batavia	25	10	10	10
So. Fincastle	53	17	14	14
Peebles	72	22	18	16
Portsmouth	105	14	12	12
Leesburg	64	13	10	10
E. Monroe	67	13½	10½	10
Greenfield	74	15	12	10½
Lyndon	77	17	14	11
Musselman	87	17	14	12
Anderson	90	18	14	12
Chillicothe	87	19	15	12½
Ray	117	19½	15½	12½
McArthur Jct.	134	20	15½	13
Athens	158	21	17	13½
Parkersburg	195	22½	18	15
Leesville	61	13	10	10
Sabina	69	13½	10½	10½
Washington C. H.	73	17	14	11
Bloomingsburg	78	19½	15½	12½
Summit	129	20	16	13
Kirkersville	137	20	16	13½
Newark	149	21	17	13½
Black Hand	159	21½	17½	14
Sonora	182	22½	18	15
Campbell's	210	25	20	17
Wheeling	258	25	20	17
Xenia	65	12	10	10
Wilberforce	69	13½	10½	10
Cedarville	73	15	12	10½

CINCINNATI TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Selma	79	17	14	11
Lilly Chapel	109	19½	15½	12½
Hanover	161	21½	17½	14
Conesville	183	22	18	14½
Newcomerstown	203	22½	18	15
Philadelphia Road	224	23	18	15½
Canotten	232	23½	18	16
Bloomfield	252	24½	19½	16½
Colliers	277	25	20	17
Oakdale	298	25	20	17
Carnegie	305	26	21	18
Pittsburgh	318	26	21	18
Dayton	59	10½	8½	8½
Harshman	61	13½	10½	10
Cold Springs	76	17	14	11
Plattsburg	91	18	14	12
London	95	18	14	12
Glade Run	100	19	15	12½
Leonardsburg	155	21	17	13½
St. James	178	21½	17½	14
Greenwich	208	22	18	14½
New London	216	22	18	15
North Eaton	249	23	18	16
Cleveland	263	23½	18½	16
Nottingham	272	25	20	17
Ashtabula	312	25	20	17
Johnson's	67	15	13	11½
Tippecanoe	74	17	14	11½
Kirkwood	94	19	15	12½
Botkins	112	20	16	13
Ottawa	151	21½	17½	14
Custar	172	22½	18	15
Wagon Works	207	24½	19½	16½
Detroit	262	24½	19½	16½

CINCINNATI TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Eaton	58	12	10	10
New Hope	63	12	10	10
Fountain City	83	19½	15½	12½
Ridgeville	107	20	16	13½
Briant	124	22	18	14½
Williams	151	22½	18	15
Huntertown	178	23	18	16
Rome City	201	24½	19½	16½
Kalamazoo	258	25	20	17
Plainwell	271	27½	22½	19
Grand Rapids	308	27½	22½	19
Brownsville	59	12	10	10
Lyons	63	15	12	10½
Brandon	90	19½	15½	12½
Broad Ripple	126	22	18	14½
Monticello	209	22½	18	15
Guernsey	214	23	18	16
Rennsellaer	235	25	20	17
Chicago	305	25	20	17
Guilford	41	15	12	10½
Adams	69	18	14	12
Fairland	91	19½	15½	12½
Moorfield	112	22	18	14½
Hilliary	200	25	20	17
Peoria	321	25	20	17
Terre Haute	183	22	18	14½
Paris	202	22½	18	15
Pana	245	25	20	17
St. Louis	342	25	20	17
Martinsville	141	21½	17½	14
Worthington	182	22	18	14½
Aurora	30	9	8	8
Nebraska	63	13	10	10
North Vernon	73	15	12	10½

CINCINNATI TO	Miles	RATES 3d Class	3d Class less 20 per cent.	4th Class
Brownstown	98	19	15	12½
Riverdale	131	19½	15½	13
Georgia	134	22	18	14½
Hyatts	180	22½	18	15
Vincennes	192	22½	18	15
Lawrenceville	198	23	18	15½
Bridgeport	260	23½	18½	16
Xenia	253	25	20	17
Totals	16076	2111½	1696	1444½
Average per mile		.1313	.1054	.0898

Recapitulation—Comparison.

	RATES 3d Class	3d Class less 20 per cent.	4th Class
Rate per Mile Out of New York City	.14517	.12013	.1168
Rate per Mile Out of Cincinnati	.1313	.1054	.0898
Excess N. Y. over Cincinnati	.01387	.01473	.0270

EDWARD COLSTON,
LAWRENCE MAXWELL, Jr.,
Counsel for the Appellants.

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No. 201.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY ET AL., APPELLANTS,

v.

THE INTERSTATE COMMERCE COMMISSION, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

ARGUMENT FOR THE INTERSTATE COMMERCE COMMISSION.

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ABBREVIATIONS.

R., Record.
I. C. C., Interstate Commerce Commission
C. L., Carloads.
L. C. L., Less than carloads.
Com. Rep., Commission's Report setting forth its findings of fact.
Subdiv., Subdivision.
Test., testimony.

IN THE SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1906.

The Cincinnati, Hamilton and Dayton Railway Company et al., Appellants,
vs.
The Interstate Commerce Commission, Appellee.
No. 201.

ARGUMENT FOR APPELLEE.

I.

STATEMENT OF CASE.

This was a proceeding in equity instituted July 20, 1904, by the Interstate Commerce Commission (appellee) in the Circuit Court of the United States for the Southern District of Ohio under section 16 of the act to regulate commerce, as then amended, for the enforcement of an order of the Commission against the appellants, the Cincinnati, Hamilton and Dayton Railroad Company et al.

The order sought to be enforced was the result of an investigation by the appellee of a complaint made to it under section 13 of the act by the Procter & Gamble Company, a corporation under the laws of New Jersey, engaged in the manufacture and sale of soap, candles, and glycerine—principally soap—at Ivorydale and Cincinnati, Ohio, and being dependent on the appellants for the transportation of its products to various markets in Ohio and other States.

Classification.—The appellants operate, for the most part, in the territory known as "Official Classification territory," which, roughly speaking, embraces that portion of the United States east of the Mississippi River and Chicago and north of the Ohio and Potomac rivers. The carriers in this territory, including appellants, have, for the purpose of fixing or apportioning rates on the different articles of traffic, divided it into six general classes numbered from 1 to 6, both inclusive, known as the Official Classification. The rates decrease as the number of the class increases, being highest on class 1 and lowest on class 6.

Grounds of complaint before the Commission.—There were two principal grounds of complaint of the Procter & Gamble Company before the Commission; one, that the appellants, January 1, 1900, advanced the classification of common or laundry soap *per carload* from class 6 to class 5, and the other, that at the same time they advanced the classification *for less than carloads* from class 4 to class 3, and thereafter, March 10, 1900, made the rate on *less than carloads* class 3 less 20 per cent, but not lower than class 4.

Both of these changes of classification resulted in an advance of the rates and it was charged by the Procter & Gamble Company that the changes were unauthorized and that the resulting increased rates were unreasonable on both carload and less than carload common soap and subjected the traffic in common soap to an undue or unreasonable prejudice or disadvantage in violation of the act to regulate commerce. (R., 10–12.)

(NOTE.—The initial letters, C. L., will hereinafter be used for carloads and L. C. L. for less than carloads.)

Finding and order of the Commission.—The Commission, after due investigation, found that the change of classification of C. L. soap from class 6 to class 5 was not unreasonable and dismissed the complaint as to that charge; but it sustained the charge as to the change in classification of L. C. L. soap from class 4 to class 3 less 20 per cent, and held that this classification of L. C. L. soap was unjust and resulted in an unreasonable rate. In pursuance of this finding the Commission issued the order involved in this case which required the appellants to "*cease and desist, on or before June 15, 1903, from charging or receiving for the transportation of common or laundry soap in less than carload quantities a rate per hundred pounds equal to 20 per cent less than the third-class rate.*" (R., 83.)

The Circuit Court rendered a decree for the enforcement of this order and the case is in this court on appeal from that decree.

II.

THE ISSUE PRESENTED IN THE CASE IN COURT.

The proceeding in court for the enforcement of the order being *de novo* (I. C. C. *v.* C., N. O. & T. P. Ry. Co., 56 Fed. Rep., 934, 935; Same *v.* C., N. O. & T. P. Ry. Co., 64 Fed. Rep., 985; Same *v.* So. Pac. Co. et al., 123 Fed. Rep., 601; Shinkle, &c. Co. *v.* L. & N. R. R. Co., 62 Fed. Rep., 693), it was commenced as an independent suit by a petition or bill of complaint filed by the Commission, in Paragraph IX of which it is alleged:

That the action of the defendants (appellants) in raising the classification of common or laundry soap L. C. L. from class 4 to class 3 less 20 per cent, resulted in unreasonable and unjust rates in violation of section 1 of the act to regulate commerce, and also in an undue and unreasonable preference or advantage and in an undue prejudice or disadvantage in violation of section 3 of that act. (R., 4.)

These allegations are traversed by the appellants in their answers filed in court.

The question is whether the order of the Commission is a "lawful order" and this depends upon whether the advanced rate on L. C. L. common soap is in violation of either section 1 or section 3, or both those sections, of the act to regulate commerce. The

provisions of those sections which are material in this case are as follows:

SECTION 1. "All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

SECTION 3. "It shall be unlawful for any common carrier subject to the provisions of this act * * * to subject * * * any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever."

Erroneous statement of the issue by counsel for the appellants.

Counsel for the appellants contend that the only question in the case is as to the *relative* reasonableness of the advanced C. L. and L. C. L. rates. In this they are mistaken. The real issue is as to the reasonableness or lawfulness of the *increased* rates on L. C. L. soap in themselves and as compared with the rates [redacted] of L. C. L. traffic, as is shown in subdivisions XIX and XX, pp. 51, 53 of this argument.

Assignments of error.—There are four assignments of error. The first, second, and fourth are general, alleging that the court erred in not holding that the order of the Commission "was not a lawful order" and in not holding that "classification of common or laundry soap in less than carload lots at 20 per cent less than third class does not violate the act to regulate commerce and does not result in an unjust and unreasonable charge for the service performed, and does not subject any particular description of traffic to any undue or unreasonable prejudice or disadvantage."

The following is the only specific assignment of error:

"3. That this court" (circuit court) "erred in holding—

"a. That the classification of soap in less than carload lots is not controlled by classification of soap in carload lots.

"b. That the classification of soap at 20 per cent less than third class is unlawful, even if such classification should be based upon its relation to other articles for carriage in less than carload lots." (R., 1095.)

III.

THE AMOUNT OF THE ADVANCE.

The rate from Chicago to New York is the basis of rates from Official Classification Territory to the east. The Chicago rate is taken as 100 per cent, and rates from shorter or longer distance points are made certain percentages of the Chicago rate, being greater or less in proportion to the length of the hauls. The Chicago rate to New York on L. C. L. soap under the classification (class 4) in force before the advance was 35 cents per hundred pounds, and under the advanced classification (class 3, less 20 per cent) it is 40 cents per 100 pounds, being an increase of 5 cents per hundred pounds. The average advance from all points is found by the Commission to be about 3 cents per hundred pounds. (R., 56.)

The Commission estimates the total annual output of the Procter & Gamble Company at 100,000,000 pounds and the proportion of that hauled L. C. L. at 35 per cent, or 35,000,000 pounds. (R., 56.) An average advance on this of 3 cents per hundred pounds yields the road an additional revenue of $10,500, and reduces the revenue of the Procter & Gamble Company to the same extent.

This in itself is a material amount, but it is to be borne in mind that the advance in the rate applies to all the soap manufacturers and shippers in Official Classification Territory as well as to the Procter & Gamble Company. The case being a proceeding by

the Interstate Commerce Commission in the interest of the public and not by, or in the interest of, any one shipper, and involving an advance in soap rates throughout Official Classification Territory, it is the aggregate tax on all shippers of soap and on the soap traffic and soap consumers throughout that territory that is to be considered and not, as contended by counsel, the small amount of the advance on a single cake of soap used by a single consumer.

The manufacture of soap is carried on in all parts of Official Classification Territory. The Commission finds:

"Common soap for laundry and other household purposes is produced in practically all sections of the United States. * * * There are numerous large common soap factories located in various cities throughout Official Classification Territory, the product of which is sold under advertised names and shipped to jobbers who supply the retail trade generally in different sections of the country, or, as in the case of the complainant, in all parts of the United States." (R., 54.)

IV.

THE DISADVANTAGE TO CINCINNATI AND THE MIDDLE WEST AND ADVANTAGE TO NEW YORK AND THE EAST RESULTING FROM THE APPLICATION TO L. C. L. SOAP OF THE CLASS 3 LESS 20 PER CENT (BUT NOT LOWER THAN CLASS 4) RATE.

The attention of the court is called to the following findings of the Commission set forth in its report in respect to the above-named matters:

"The fourth-class rate from Cincinnati to Boston is 34½ cents and the 20 per cent less than third-class rate between the same points is 38½ cents, indicating an increase of 4 cents in the less than carload rate from Cincinnati to Boston. The rate from New York to Boston is 19 cents, fourth class, and 20 per cent less than third class, but not below fourth class, also gives a rate of 19 cents, showing no advance over fourth class from New York to Boston. These differences are due to variations in the scales of rates prevailing in different sections. * * * When, for example, under the application of that rule, the rate from Cincinnati to Boston is increased 4 cents and the rate from New York to Boston remains the same as compared with the fourth-class rates formerly in effect, it is plain that this method of determining rates upon the percentage basis operates unequally upon the different shippers of less than carload quantities in that territory." (R., 72.)

"The new class inserted in the Official Classification on March 10, 1900, whereby 20 per cent less than third-class but not lower than fourth-class rates are provided for less than carload soap and numerous

other articles, operates with respect of soap, as above found in this case, to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advances in less degree or not at all the less than carload rates paid by soap shippers in New York City and other parts of the East." (R., 82.)

V.

CHANGES IN OFFICIAL CLASSIFICATION.

The first official classification (called official because applied to Official Classification Territory), Classification No. 1, was made April 1, 1887. From that time up to January 1, 1900, there were nineteen different classifications, established by committees composed of expert railway officials—the classification then put in force being Classification No. 20. While in those nineteen classifications soap C. L. has been sometimes in class 5 and sometimes in class 6, soap L. C. L. was placed in class 4 continuously from the first classification, April 1, 1887, up to Classification 20, January 1, 1900.

The following table shows the changes in classification of soap:

	Carloads (C. L.).	Less than carloads (L. C. L.).
April 1, 1887	Class 5	Class 4.
June 22, 1891. By order of Commission.	Class 6	Do.
January 1, 1895	Class 5	Do.
January 15, 1895	Class 6	Do.
January 1, 1900	Class 5	Class 3.
March 10, 1900	Class 5	20 per cent less than class 3, but not lower than class 4.

(R., 69.)

It thus appears that for a period of thirteen years, extending from the first classification to January 1, 1900, the defendants voluntarily gave common soap L. C. L. the class 4 rate.

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Practical admission of reasonableness of former rate as applied to less than carload soap.

It is well settled that a carrier by putting in force a rate practically admits that the rate is profitable, and this admission acquires greater force when the rate is long maintained.

In American and English Encyclopedia of Law, Vol. XVII, page 133, it is said:

"Where an advance is made in rates which have been long maintained and the evidence shows that the traffic affected is large and important and constantly increasing, the advance will be held unjust unless it is satisfactorily explained."

The findings of fact by the Commission, as set forth in its report on a case investigated by it, are made by the law *prima facie* evidence of those facts (secs. 14 and 16, act to regulate commerce). The Commission in its report in this case finds that—

"Soap in less than carloads always had fourth-class rates until January 1, 1900. The presumption that such rates are reasonable arises from the voluntary action of the carriers in keeping those rates in effect during such a long period; and that presumption has not been overcome, in our judgment, by the evidence presented in this case." (R., 82.)

In the opinion of the court below it is said:

"Common soap in less than carload lots was assigned to the fourth class in the first classification made under the act to regulate commerce and remained there until the reclassification complained of (January 1, 1900), and did not follow the variations of soap in carload lots; and the replacing of soap in carloads in the fifth class did not justify the displacing of soap in less than carloads from the class *in which it had been voluntarily maintained by the defendants for more than thirteen years.*"

(R., bot. p. 1091, top p. 1092.)

Case Relates only to Common or Laundry Soap.

It is important that it be borne in mind that this case relates solely to *Common or Laundry soap*, and not to "fancy, toilet, and castile soap." The latter L. C. L. was placed in class 2 from April 1, 1887, to September 1, 1891, while the former remained in class 4.

(Test. Gill, R., 238.)

VI.

SOAP UNDER WESTERN AND SOUTHERN CLASSIFICATIONS.

The proposition that soap L. C. L. should be given a classification and rate not higher than the class 4 classification and rate is supported by the soap classification and rate under both the Western and Southern classifications.

Under the Western Classification, which is applied to territory west of the Mississippi River and Chicago, soap is placed in *class 5 C. L. and class 4 L. C. L.*

In the Southern Classification, which prevails in territory east of the Mississippi and south of the Ohio and Potomac rivers, soap in any quantity is given a low classification, namely, *class 6.* (R., 53, 54.)

VII.

EXCUSES OR GROUNDS FOR THE ADVANCE IN CLASSIFICATION AND RATE.

The appellants, realizing that the burden was upon them to justify or satisfactorily explain the advance in a classification and rate which they had maintained for thirteen years, set up on the hearing before the Commission a number of excuses or grounds for the advance.

These excuses appear to be practically abandoned in the case in court. Their manifest insufficiency tends strongly to show that the advance is without justification, *the presumption being that if the carriers had had valid excuses they would have offered them in the first instance.*

These excuses are—

1. The great profit there is in the business of the Procter & Gamble Company.

2. Soap being profitable, could "stand" an increased rate.

3. Large allowances out of the rate to the Procter & Gamble Company for the services at Ivorydale of the terminal railway owned by that company.

4. Acceptance of alleged rebates by the Procter & Gamble Company from the defendant carriers.

5. Increase of operating expenses of the defendant carriers.

These excuses will be considered in the order named.

The main contention in behalf of the carriers *now* seems to be that the court below erred in holding that the classification of soap L. C. L. was not controlled by that of soap C. L., and in not holding that, soap C. L. being in class 5, soap L. C. L. should be in class 3, less 20 per cent.

(See 3d assignment of error, Subdiv. II, p. 11, *ante*.)

These propositions are discussed at length in Subdivisions XIX, XX, XXI, XXII, XVIII, pp. 51–60, of this argument.

VIII.

THE PROFITABLE CHARACTER OF THE BUSINESS OF THE PROCTER & GAMBLE COMPANY.

In the first place, it was contended that the advance was justified because of the great profit there was in the business of the Procter & Gamble Company. It will be found on examination of the record that a large part of the voluminous testimony introduced by the defendants was for the purpose of sustaining this contention.

It is conceded that the *entire* business of the Procter & Gamble Company has yielded large profits, and the Commission finds in its report and opinion that "the business of the Procter & Gamble Company, *as a whole*, has been, and is, extremely profitable." (R., 48.)

The business of the Procter & Gamble Company, however, *as a whole*, embraces the manufacture not only of common or laundry soap, which is the only soap the classification and rate of which is involved in this case, but also the manufacture of candles and glycerine, and of Ivory soap, used for toilet purposes. The large profits of the business of the Procter & Gamble Company are derived from the manufacture of these other articles, as well as from common or laundry soap, and the profits on the latter are far less than those on the higher grades of toilet soap. The evidence does not show that the manufacture of common or laundry soap is exceptionally profitable. (R., 48.)

In the next place, it is to be borne in mind that the order of the Commission, and consequently this case, relate to the advance in the classification and rate on common soap, not only as it affects the Procter & Gamble Company, but also as it affects all shippers and manufacturers in the Official Classification Territory. The manufacture of soap is carried on in almost every town of importance throughout that territory. (R., 54.)

There is no proof that the business of all these soap manufacturers and shippers is exceptionally profitable (R., bottom p. 56) and, certainly, the great profit in the business of the Procter & Gamble Company is no ground or justification for an advance in the classification and rate of the soap of other manufacturers and shippers.

IX.

CONTENTION THAT ADVANCE WAS JUSTIFIABLE BECAUSE SOAP, BEING PROFITABLE, COULD "STAND" AN INCREASED RATE.

Another justification set up for the advance is that soap will "stand" an increased rate.

The idea seems to be prevalent among railway officials and their counsel that carriers have a right to charge *all that the traffic will "stand" or "bear;"* in other words, that any rate is reasonable under which the traffic will move to market or which is not prohibitory of such movement. On page 5 of the printed argument filed before the Commission in behalf of the Baltimore and Ohio and the Baltimore and Ohio Southwestern roads, it is said:

"If there is any business in the country that is pecuniarily able to *stand* an increase in transportation rates, that business is the manufacture of soap."

The proposition that a common carrier has the right to exact any rate which the traffic will "stand," or under which it will move, is mainfestly erroneous. There is a large margin between a reasonable rate and a prohibitory rate, or rate under which the traffic will not move. Traffic will move under excessive rates until they reach the point of being absolutely prohibitory. For example, a carload of produce may yield the shipper under a rate reasonably compensatory to the carrier a net profit of $100 in the market to which it is shipped, but under the rate charged it may yield

only $50 net profit, yet the shipper will ship and the traffic will move under the latter rate, inasmuch as a half loaf is better than no loaf or some profit is better than no profit at all.

This assumption that any rate is reasonable under which the traffic will move is in direct conflict with the rule laid down by this court in *Smythe* v. *Ames* (169 U. S., p. 547), where it is said, "the public is entitled to demand that no more be exacted from it for the use of a public highway than the services rendered are reasonably worth."

Under this rule the test of the reasonableness of a rate is not whether the traffic, because of the great profit there is in it to the producer or shipper, can stand or will move under the rate, but whether the rate yields a reasonable compensation for the service rendered by the carrier.

Profit to shipper in traffic not to determine rate.

If the prosperity of the business of the shipper is to have a controlling influence in fixing a rate, that would justify a higher rate on the traffic of the prosperous shipper than on that of one less prosperous, and there could be no uniformity of rates.

To give the carrier the right to participate in the prosperity of the shipper *by raising rates* is simply to license the carrier to appropriate *pro tanto* that prosperity or, in other words, to transfer the shipper's legitimate profit in his business from the shipper to the carrier.

If the rate is to be advanced when the shipper's profits increase, it should be reduced when they fall off. There is, so far as I know, no instance of a reduction on that ground.

The shipper has as much right to share *by a reduction in rates* in the prosperity of the carrier as the carrier has to share *by an advance in rates* in the prosperity of the shipper. The proof shows that the business of the defendants has phenomenally increased, both before and since the advance in classification of soap.

See Subdivision XII, pp. 35, 36, of this argument.

The contention that the advance in classification and rate was justified because of the great profits in the business of the Procter & Gamble Company is consistent with the idea that the rates *minus* the advance were in *themselves* reasonably remunerative.

How carrier legitimately shares prosperity of shipper.

The increased prosperity of shippers along the line of a railway enlarges the volume of business of those shippers, both incoming and outgoing, and consequently increases the business or the tonnage of traffic hauled by the carrier, and in this way the carrier necessarily and *legitimately* participates in, or is benefited by, the prosperity of the shipper.

X.

IT WAS FURTHER CONTENDED THAT LARGE ALLOWANCES OUT OF THE RATES TO THE PROCTER & GAMBLE COMPANY FOR THE TERMINAL SERVICES OF THE IVORYDALE AND MILL CREEK VALLEY RAILWAY COMPANY JUSTIFY THE ADVANCE IN CLASSIFICATION AND RATE.

The three initial and delivering lines for the traffic of the Procter & Gamble Company from and to Ivorydale are defendants—the Cincinnati, Hamilton and Dayton, the Baltimore and Ohio Southwestern, and the Cleveland, Cincinnati, Chicago and St. Louis railways. The stations of these roads are from 2,000 feet to a half mile distant from the soap factories of the Procter & Gamble Company at Ivorydale, and they are connected with those factories by the tracks of the *Ivorydale and Mill Creek Valley Railway*, which is owned and operated as a terminal railway by the Procter & Gamble Company. This railway has about six miles of track and performs terminal services, including the hauls to and from its points of connection with the roads of these three appellants, the loading and unloading of the freight, storage, and everything connected with the inbound and outbound terminal service.

For this service these three defendants and also the Erie Railroad Company, which has a trackage arrangement to Ivorydale over the line of the Cincinnati, Hamilton and Dayton Railway Company, make to the Procter & Gamble Company certain allowances out of the rate charged them.

It is contended in behalf of the appellants that these allowances are largely in excess of the value of such services; that they amount to rebates on the rate charged the Procter & Gamble Company for the transportation of its soap to market; that it is also an unjust discrimination in favor of the Procter & Gamble Company, and that this justifies the advance in the classification and rate of common soap complained of in this case. A large amount of the testimony of the appellants and much of their argument before the Commission are devoted to this contention.

(As to whether the allowances are, in fact, too liberal, the Commission holds that the evidence does not show, "considering all the services rendered by the Ivorydale and Mill Creek Valley Railway Company." (R., 60.) The details as to the services of this Ivorydale and Mill Creek Valley Railway Company and the allowances received therefor by the Procter & Gamble Company are set forth in the report and opinion of the Commission (R., 58, 59), and it is unnecessary to state them here.)

In the printed argument filed for the Baltimore and Ohio Southwestern Railroad Company and the Baltimore and Ohio Railroad Company before the Commission it is said:

"These allowances" (for terminal servces of the Ivorydale Railway) "give the Procter & Gamble Company a great advantage over all their competitors." (Page 11.)

And again:

"It being shown that the present increase to the Procter & Gamble Company in freight on soap is not as much as the price paid by the railroads for the business" (meaning the price paid the Procter & Gamble Company for the terminal services of the Ivorydale Railway Company), "it is clear that complainant suffers no pecuniary injury from this raise in the rates." (Page 19.)

And again:

"Our claim is that all of these earnings" (of the Ivorydale Railway Company) "represent rebates or allowances to the Procter & Gamble Company, and that their claim of representing terminal charges is a sham." (Page 12.)

Appellants set up their own violation of law in justification of the advance.

As these allowances for the services of the terminal railway are paid to the Procter & Gamble Company by the appellants, who reach Ivorydale, they occupy the attitude of claiming that, because of rebates paid by them to, and unjust discrimination practiced by them in favor of, the Procter & Gamble Company they are entitled to advance the classification and rate. They set up their own alleged wrong or violation of law in justification of this advance. With one hand they pay rebates, as they allege, to the Procter & Gamble Company, and with the other hand withdraw those rebates by an advance in classification and rate.

By the advance the appellants are seeking to indirectly nullify a contract.

The allowances made by the defendants for the services of the terminal railway are made under a contract signed by themselves and the Procter & Gamble Company and entered into, as stated in the printed argument filed in behalf of defendants (the B. & O. S. W. and the B. & O. R. R. companies), for the purpose of securing the business of the Procter & Gamble Company. (R., 58–60.) The appellants are, therefore, claiming the right by an advance in classification and rate to nullify a contract into which they have deliberately entered with the Procter & Gamble Company, based on a valuable consideration.

The appellants punish all shippers of soap in Official Classification Territory because of the alleged rebates paid by them to the Procter & Gamble Company alone.

The advance in the classification and rate being general and applicable to all shippers of soap throughout Official Classification Territory, the appellants are claiming because of their alleged rebates to and unjust discrimination in favor of the Procter & Gamble Company, the right to advance the classification and rate not only on the soap of that company but on that of all these other shippers. These other shippers, who are innocent and clean handed, are punished by the defendants for the alleged joint transgressions of the appellants and the Procter & Gamble Company.

The plea that the advance was justified because of rebates paid the Procter & Gamble Company out of the rates is an admission that the rates *in themselves* in the absence of the rebates would be reasonably remunerative.

XI.

CONTENTION THAT, BECAUSE THE COMPLAINANT BEFORE THE COMMISSION, THE PROCTER & GAMBLE COMPANY, RECEIVED ALLEGED REBATES AND DID NOT FOR THAT REASON COME BEFORE THE COMMISSION CLEAN HANDED, THE PROCEEDING IN COURT BY THE INTERSTATE COMMERCE COMMISSION AS COMPLAINANT SHOULD NOT BE SUSTAINED.

In the printed argument filed before the Commission by the Baltimore and Ohio and the Baltimore and Ohio Southwestern roads it is further said:

"The Procter & Gamble Company, enjoying these discriminatory advantages, should be affected in this proceeding by the rule which requires that complainant must come into court with a clean conscience. (See observations of Chief Justice Marshall in *Mason* v. *Ship Blaireau*, 2 Cranch., 185, et seq.)"

(Page 19, argument for B. & O. S. W. and B. & O. R. R. Co.)

This shows the grave error into which the appellants' counsel have fallen in treating this case as a personal suit involving only the private rights of the Procter & Gamble Company. A proceeding in court like the present by the Interstate Commerce Commission for the enforcement of an order is not a private or personal suit, but a suit for the enforcement of a public duty.

In *Interstate Commerce Commission* v. *The Southern Pacific Company et al.* (132 Fed., Rep., 829), there was involved an order of the Commission forbidding the enforcement by defendants therein of a rule

whereby they reserved to themselves, as initial carriers, the right of routing citrus fruit traffic beyond their own lines and denied this privilege to the shippers. The defendant railway companies contended that, even if the rule were unlawful, the complainants (shippers) were not entitled to relief, because they had used the privilege of routing for the unlawful purpose of securing rebates and desired to retain it for that purpose. In overruling this contention the court says:

"With reference to defendants' contention that the complainants before the Interstate Commerce Commission were there with unclean hands, it is only necessary to say that in this court the Commission represents the public at large, and therefore no participation by said complainants in the unlawful practice of rebates could bar relief."
(132 Fed. Rep., 847.)

In the present case the order of the Commission sought to be enforced is in the interest of the public; it applies to the rates charged all shippers throughout the Official Classification Territory, as well as the rates charged the Procter & Gamble Company. The public interested includes consignees, consumers, and others, as well as shippers or manufacturers.

XII.

INCREASE OF OPERATING EXPENSES OF DEFENDANTS IS THE RESULT, FOR THE MOST PART, OF INCREASE IN THEIR BUSINESS.

It was also urged in behalf of the appellants that the advance in classification and rate was justified, if not necessitated, by an increase in their operating expenses, resulting from higher wages paid their employees and higher prices of the material and equipment used by them. The proof shows increases in wages and in the prices of material and equipment, and these increases have added to operating expenses, but the total increases in those expenses are due only in part to the advances in wages and prices of supplies and equipment. They are attributable in a great measure to the constant growth or enlargement of the business of the roads. The greater the volume of business the greater is the aggregate cost of conducting it, or, in other words, of operating the roads.

This is a self-evident proposition and requires no proof to sustain it. It is admitted by all the railroad officials questioned on the subject that the great increase in business has resulted in an increase in the aggregate amount paid in wages and salaries and also in the amount necessarily expended on terminal and other facilities for handling the increased traffic.

C. T. Scaife, local freight agent of the Illinois Central Railroad at Chicago. (R., 229.)

C. E. Gill, chairman Official Classification Committee. (R., 249.)

Some idea of the increase in the freight business of the appellants may be obtained from the tables below:

From annual reports of the companies named for the years ending June 30, 1895 and 1899.

Name of road.	Total freight tonnage.		
	1895.	1899.	Increase, 1899 over 1895.
Cincinnati, Hamilton and Dayton Rwy. (or R. R.) Co.	3, 959, 038	4, 442, 474	483, 436
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co.	14, 308, 189	19, 409, 527	5, 101, 338
Pennsylvania R. R. Co.	55, 625, 107	69, 566, 877	13, 941, 770
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co.	8, 625, 073	10, 043, 126	1, 418, 053
Lake Shore and Michigan Southern Rwy. Co.	13, 214, 833	16, 623, 247	3, 408, 414
New York Central and Hudson River R. R. Co.	19, 741, 495	25, 356, 474	5, 614, 979
Baltimore and Ohio Southwestern Rwy. Co.	3, 678, 036	4, 435, 035	756, 999
Baltimore and Ohio R. R. Co.	16, 080, 423	25, 057, 178	8, 976, 755
Total	135, 232, 194	174, 933, 938	39, 701, 744

(R., 213, 214.)

The foregoing table gives the increase in the tonnage of traffic from 1895 to 1899, the period immediately preceding the advance in classification and rate. The growth of the business of the appellants

from 1899 to 1904, both inclusive, is shown in the table following:

From annual reports of the companies named for the years ending June 30, 1899 and 1904.

Name of road.	Total freight tonnage.		
	1899.	1904.	Increase, 1904 over 1899.
Cincinnati, Hamilton and Dayton Rwy. Co	4,442,474	6,107,628	1,665,154
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co	19,409,527	29,616,716	10,207,189
Pennsylvania R. R. Co	69,566,877	98,098,025	28,531,148
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co	10,043,126	12,510,586	2,467,460
Lake Shore and Michigan Southern Rwy. Co	16,623,247	25,920,421	9,297,174
New York Central and Hudson River R. R. Co	25,356,474	36,379,655	11,023,181
Baltimore and Ohio Southwestern Rwy. Co	4,435,035	(a)	.....
Baltimore and Ohio R. R. Co	25,057,178	43,347,193	18,290,015
Total	174,933,938	251,980,224	81,481,321

a Included in report of Baltimore and Ohio R. R. Co.

(R., 213, 214.)

The rate per 100 pounds or per ton on large quantities of traffic is, as a rule, less than on smaller quantities. This is illustrated by the fact that the rates in Official Classification Territory and in Eastern Territory are much lower than in Southern Territory, because of the greater density of population, and, consequently, greater tonnage of traffic in the first two territories than in the last named. *The more traffic a road has to haul the lower the rate it can afford to haul it for.*

XIII.

THE INCREASE IN BUSINESS HAS RESULTED IN LARGER NET AS WELL AS GROSS EARNINGS.

While the operating expenses of the appellants have grown from the causes stated, the increased business has naturally resulted in an increase in earnings from operation. In the language of one of the witnesses for the appellants, "the more business you handle the more money you get as a total."

C. T. Scaife, R., 229.

Not only has there been an increase in the gross earnings, but also in the NET earnings of nearly all the defendants, as shown in the tables below:

From annual reports of the companies named, for the years ending June 30, 1895 and 1899.

Name of road.	Net earnings.		
	1895.	1899.	Increase, 1899 over 1895.
Cincinnati, Hamilton and Dayton Rwy. (or R. R.) Co.....	$1,630,414	$1,588,743	[a] $41,671
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co.....	5,241,592	6,495,180	1,253,588
Pennsylvania R. R. Co.....	19,703,771	21,093,608	1,389,837
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co.....	3,707,686	4,482,738	775,052
Lake Shore and Michigan Southern Rwy. Co.....	7,101,308	7,747,633	646,325
New York Central and Hudson River R. R. Co.....	14,568,642	17,074,611	2,505,969
Baltimore and Ohio Southwestern Rwy. Co.....	2,305,932	1,857,728	[a] 448,204
Baltimore and Ohio R. R.Co....	6,822,878	6,425,008	[a] 397,870
Total.....	61,142,223	66,765,249	[b] 5,683,026

[a] Decrease. [b] Net increase.

The above table gives the increase in net earnings from 1895 to 1899, the period immediately preceding the advance in classification and rate. The following table shows the increase in *net* earnings of *all* the defendants from 1899 to 1904, both inclusive:

From annual reports of the companies named, for the years ending June 30, 1899 and 1904.

Name of road.	Net earnings.		
	1899.	1904.	Increase, 1904 over 1899.
Cincinnati, Hamilton and Dayton Rwy. Co	$1,588,743	$1,782,282	$193,539
Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co	6,495,180	7,309,260	814,080
Pennsylvania R. R. Co	21,093,608	35,478,335	14,384,727
Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co	4,482,738	5,036,352	553,614
Lake Shore and Michigan Southern Rwy. Co	7,747,633	7,979,096	231,463
New York Central and Hudson River R. R. Co	17,074,611	21,929,425	4,854,814
Baltimore and Ohio Southwestern Rwy. Co	1,857,728	(a)	.....
Baltimore and Ohio R. R. Co	6,425,008	21,442,217	15,017,209
Total	66,765,249	100,956,967	36,049,446

a Included in report of Baltimore and Ohio R. R. Co.

An increase in the operating expenses of a carrier is no excuse for an advance in the rate charged the public so long as the NET *earnings of the carrier continue to increase.*

MOREOVER, *the operating expenses of soap manufactures have been increased* by advances in the wages paid by them for labor and also by advances in the prices of material used by them. These advances have not affected the carriers alone. (R. 55.)

XIV.

STATEMENT THAT A LARGE PART OF THE NET EARNINGS ARE EXPENDED FOR PERMANENT IMPROVEMENTS.

It is asserted by counsel for carriers that a large part of the "net earnings" shown in the last two tables in the preceding subdivision of this argument were expended for permanent improvements or betterments in the shape of new and larger depots, etc., and it is claimed that "a statement which stops with net earnings and does not show how the net earnings are applied, proves nothing."

We submit that, if the application of these net earnings was material, the burden was upon the carriers to show that application and to *what extent*, if any, they have been applied to permanent improvements or betterments and to *what extent* to dividends.

Moreover, if it be true that a large amount of these net earnings have been expended in permanent improvements, that is no answer to our contention that "an increase in the operating expenses of the carrier is no excuse for an advance in the rate *charged the public* so long as the net earnings of the carrier continue to increase."

Permanent improvements add to the capital or wealth, as well as earning capacity, of the roads, and in the long run benefit stockholders by increasing their dividends. Earnings invested in permanent improvements are in a sense profits.

In any event, as held by this court in *Smythe* v. *Ames*, a carrier can exact from the public "no more than the services rendered are reasonably worth," whether its earnings be appropriated to permanent improvements or to dividends.

Smythe *v.* Ames, 169 U. S., p. 547.

Net Earnings Paid Dividends.

Notwithstanding the fact, if it be a fact, as claimed by counsel for the appellants, that the net earnings are largely appropriated for extensive permanent improvements, they also paid dividends before the advance in the classification and rate on soap, and still pay dividends. This is shown by the annual reports filed with the Commission by the appellants. For the year preceding the advance in classification, 1899, the appellant roads named below reported the payment of dividends, as follows:

Cincinnati, Hamilton and Dayton Railway	$380,340.14
Pittsburg, Cincinnati, Chicago and St. Louis Rwy	340,248.00
Pennsylvania Railroad Company	6,465,252.50
Cleveland, Cincinnati, Chicago and St. Louis Rwy	525,731.00
New York Central and Hudson River Railroad	4,000,000.00

Expenditures for Permanent Improvements Included in Operating Expenses.

The reports of the carriers also show that large expenditures for permanent improvements are included in operating expenses. The justice or propriety of this is, to say the least, questionable. In Central Yellow Pine Association *v.* The Illinois Central R. R. Co. et al., the Commission said:

"It is to be noted that these operating expenses embrace large annual expenditures for real estate, right of way, tunnels, bridges, and other strictly permanent improvements and also for equipment, such

as locomotives and cars. While payments for repairs, whether applied to permanent improvements or equipment, are properly chargeable to current annual operating expenses, this would not appear to be the case as to the improvements or equipment themselves—the former being permanent and the latter lasting for many years. The expenditures for permanent improvements and for equipment made in a single year may obviate the necessity for like expenditures or expenditures to the same extent for many years to come, and the extraordinary amount of such expenditures made by the defendants in a few years preceding and including the year of the advance in rate indicates that they will not be required again for a long period of time. They should not therefore be taxed as part of the current or operating expenses of a single year, but should be, so far as practicable and *so far as rates exacted from the public* are concerned, "projected proportionately over the future."

(10 I. C. C. R., 505.)

XV.

IF THE ADVANCE IN RATE WAS NECESSARY TO MEET INCREASED OPERATING EXPENSES, IT SHOULD HAVE BEEN MADE ON ALL TRAFFIC AND NOT ON A COMPARATIVELY FEW ARTICLES.

Conceding, for argument's sake, that an advance in rates was necessary to enable appellants to earn more revenue to meet increased operating expenses, we contend, *in the first place*, that that advance should have been general and not on a comparatively few articles of traffic. This is manifestly just, because, if there was an increase in the cost of construction, maintenance, and operation, that increased cost was necessary for or was incurred in the transportation of all traffic and not the transportation of any particular article of traffic. Moreover, if such increased cost had been distributed or been met by an advance in rates on all traffic, the advance on a single article would have been so small as not to have been a burden.

If it was Proper to Advance the Rate on a Few Articles and not on All, Soap, being an Article of Necessity and Common Use and of Comparatively Small Value, should not have been selected.

In the *next place*, conceding an advance was necessary and that it was properly made to apply to some and not to all articles of traffic, the question arises whether soap should have been selected as one of the articles the rate and classification of which should have been advanced. The advance, we contend,

should have been made on luxuries and traffic of great value and not on articles of necessity and general use, but of comparatively small value, like common soap. Soap is essential to cleanliness, and we have scriptural authority for the proposition that cleanliness is akin to godliness. From a moral as well as a sanitary standpoint, an article like soap should be one of the last selected for an advance in rates.

XVI.

IN ADVANCING RATES THE INTERESTS OF THE PUBLIC, AS WELL AS OF THE CARRIER, ARE TO BE CONSIDERED.

The plea that an advance in the soap rate was properly made because of a need of an increase of revenue has regard rather to the interest of the carrier than of the public.

Common carriers are in a sense creatures of the public; they derive their franchises or, in the language of this Court, "their right to exist," from the public; and the consideration upon which those franchises are granted is the benefit the public has a right to expect from the building and operation of railways.

"A railroad corporation has a public duty to perform as well as a private interest to subserve, and the courts should not permit the abandonment of the one for the promotion of the other."

In *Smythe* v. *Ames* (169 U. S., 544) this Court held that a proposition advanced by counsel was unsound in that, in the language of the court, it—

"Omitted altogether any consideration of the right of the public to be exempt from unreasonable exactions, and makes the interests of *the corporation maintaining a public highway the sole test in determining whether the rates established by or for it are such as may be rightfully prescribed between it and the public.*"

The court further says, in this connection:

"A railroad is a public highway, and none the less so because constructed and maintained through the

agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls is given primarily for the benefit of the public. * * * *It can not, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the State may fix its rates with a view solely to its own interests and ignore the rights of the public.*"

The court then cites *Covington and Lexington Turnpike Company* v. *Sanford* (164 U. S., 596, 597), and makes the following quotation from the opinion in that case:

"It can not be said that a corporation is entitled, as of right, and *without reference to the interests of the public*, to realize a given per cent upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, *stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored.* It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. * * * The public can not properly be subjected to unreasonable rates *in order simply that stockholders may earn dividends* * * *."

It is particularly essential that carriers should have due regard to the interests of the public in advancing the classification and rate on such an article as soap, which, as before said, is, or should be, an article of universal use and which is not only necessary for purposes of sanitation but is also conducive to good morals.

XVII.

IMPROVED AND EXTENDED FACILITIES FOR HANDLING TRAFFIC HAVE LESSENED THE COST TO THE CARRIER.

Witnesses for the carriers testify that the facilities for handling freight have been greatly enlarged, as well as improved in character. The natural tendency and effect of this must be in the direction of lessening the expense to the carrier. Witnesses for the carriers, however, radically disagree on this point, as shown by the testimony of two of their leading witnesses, given below in parallel columns.

THE DOCTORS DISAGREE.

Testimony of John E. Loomis, freight agent, at Chicago, of the Pittsburg, Cleveland, Cincinnati and St. Louis Railroad.

We have very superior facilities in Chicago for handling the freight; we have ample room, both freight and car trackage room, *which enables us to handle freight at a minimum cost.*

Q. Are the facilities at Chicago for handling freight greater now than they have been in the past?—A. Yes, sir.

Q. Were they greater in 1900 than they had been previous to that time?—A. Yes, sir.

Q. Do not these greater facilities for the handling of freight reduce the expense to some extent?—A. *Very much, sir.*

Q. Is not the tendency now of modern improvements and facilities for handling the traffic to lessen the expense?—A. *Yes, sir.* (R., 220.)

Testimony of C. E. Gill, chairman of the official Classification Committee.

The improvements in appliances and facilities for transporting and handling traffic which has been made since 1887 *have increased rather than reduced the expenses of handling the traffic.* (P. 36.)

Witness believes "it costs a little more to-day *because of the many labor-saving appliances.* Taking the self-coupling device, it enables them to get along with less help in a way, of course, but the damages that are sustained by freight in transportation has largely increased."

Q. Then these labor-saving appliances are a detriment rather than an improvement?—A. I know that some people are of the opinion that while they are not a detriment, the *cost has been increased.*

Q. They are really, then, no improvement?—A. They are an improvement to the extent that they save human life. (R., 249.)

"Who shall decide, when doctors disagree?"

There can be no difficulty in deciding which of these doctors is correct. The testimony of Mr. Loomis is in accordance with reason and common sense, that of Mr. Gill is not supported by either. We are told by him that labor-saving appliances increase rather than lessen expense, and, in effect, that improvements are detriments.

Commission must rely in these cases on testimony of railroad officials.

The court should bear in mind that in these cases against the railway companies the Commission is compelled to rely upon the testimony of railway officials, These officials are hostile witnesses so far as the Commission is concerned and willing witnesses in behalf of the railway companies. They are, in fact, the real defendants, because it is their work which is being attacked. They make classifications and rates, and consequently with them "whatever is, is right," so far as these matters are concerned.

It can not be claimed that these witnesses are exempt from the human infirmity of bias. The law recognizes that interested witnesses are subject to bias and, therefore, allows the fact of interest to be given in evidence before courts and juries to be considered by them in weighing the testimony of such witnesses. An examination of the testimony in this case will show that this bias of railway officials is constantly cropping out and, at least, giving color to their testimony.

XVIII.

CONFLICT BETWEEN THE OPINION OF MR. GILL, CHAIRMAN OF THE OFFICIAL CLASSIFICATION COMMITTEE, AND THAT OF MR. MAXWELL, COUNSEL FOR THE APPELLANT, AS TO WHETHER OR NOT THE MEMBERS OF THE OFFICIAL CLASSIFICATION COMMITTEES ARE EXPERTS.

Interstate Commerce Commission held by the courts to be "an expert tribunal."

Mr. Maxwell, as counsel for the appellants, in his oral argument before the court pronounced the various Official Classification committees which framed the 19 classifications in which L. C. L. soap is placed in class 4, to have been experts of the highest order, selected as members of such committees because of their exceptional qualifications for the duties which they were called upon to perform as such members.

Mr. C. E. Gill, chairman of the Official Classification Committee, expresses an opinion directly antagonistic to that of Mr. Maxwell on this point. With a view, doubtless, of lessening the force of the deliberate action of those committees in placing L. C. L. soap for so long a time in class 4, he gives it as his opinion that, while the classification committees are most important committees, and composed of railway officials, they **"could not be pronounced experts,"** but were selected **"more particularly from a geographical standpoint and not solely with a view to their competency."** (R., bot. p. 248.)

The statement that the members of so important a committee as a classification committee are selected rather with a view to their geographical location than to their competency and can not be "pronounced experts," taxes our credulity. We can not but agree with Mr. Maxwell and believe that Mr. Gill's zeal in behalf of the carriers has led him unconsciously into an error. If, however, Mr. Gill be correct in this matter, it does away with any weight which might otherwise be given to the action of the Classification Committee which January 1, 1900, advanced the classification of L. C. L. soap from class 4 to class 3 and subsequently, March 10, 1900, made the classification of L. C. L. soap class 3 less 20 per cent.

The Commission an expert tribunal.

If, as Mr. Gill testifies, the members of the Classification Committee can not be "pronounced experts," the Interstate Commerce Commission has the advantage in that it is held by the courts to be "an expert tribunal," and its action is therefore entitled to more weight than that of an inexpert committee. In *East Tenn., Va. & Ga. Ry. Co. et al.* v. *The Interstate Commerce Commission* the Circuit Court of Appeals, Judge Taft, delivering the opinion of the court, says:

"It has been suggested that traffic managers are much better able, by reason of their knowledge and experience, to fix rates and to decide what discriminations are justified by the circumstances than the courts. *This can not be conceded so far as it relates to the Interstate Commerce Commission, which, by reason of the experience of its members in this kind of controversy and their great opportunity for full information, is, in a sense, an expert tribunal.*" (99 Fed.

Rep., p. 64.) (While this case was reversed in the Supreme Court, it *was not reversed on this point*, and the above extract from the opinion is quoted and approved in *I. C. C.* v. *L. and N. R. R. Co.*, 118 Fed. Rep., 622.)

At the time (May 14, 1903) when the order of the Commission sought to be enforced in this case was made, all the members of the Commission had been serving for a number of years, and, as said by Judge Taft, "by reason of their experience in this kind of controversy and their great opportunity for full information," were entitled to be considered experts."

XIX.

ABANDONMENT OF INCREASED EXPENSE OF OPERATION AS GROUND FOR ADVANCE.

Commission in speaking of "Relative Rates," had in mind such rates as between C. L. Soap and other articles of C. L. Traffic or as between L. C. L. Soap and other articles of L. C. L. Traffic.

Counsel for appellants in the court below abandoned the increase in operating expenses as a ground or excuse for the advance in classification and rate and contended that the only question was as to the relation which should be maintained between the rates on C. L. and on L. C. L. soap.

In their printed argument filed in that court it is said:

"The question whether the increase in rates made by Classification No. 20 was justified by the increase in the cost of operating the railroads, so much debated before the Commission, is not involved in this hearing. The Commission declined to decide it. They said:

"'We regard the primary and controlling question in this case as a question of classification; that is, of *relative rates* [italics theirs], and dispose of it accordingly.'"

The context shows that when the Commission used this language it was discussing solely the question of the reasonableness of the advance of C. L. soap from class 6 to class 5 and was considering "*relative rates*" only as between C. L. soap and other *C. L.*

traffic. Immediately following the statement quoted by counsel for the appellants the Commission says:

"So long as *most articles* entitled to as low rates as C. L. soap are put in the 5th class and required to pay 5th-class rates we are not warranted on the evidence before us in condemning the same rating for that commodity."

(R., bot. p. 81.)

After thus disposing of the charge as to the advance in classification and rate of C. L. soap, the Commission proceeds in the next paragraph to consider the advance in the classification and rate of L. C. L. soap from class 4 to class 3 less 20 per cent. (R., 82.)

XX.

THE CLASSIFICATION OF SOAP L. C. L. NOT CONTROLLED BY THE CLASSIFICATION OF SOAP C. L., BUT BY THE RELATION WHICH SOAP L. C. L. BEARS TO OTHER ARTICLES L. C. L.

Counsel for the appellants contend, in effect, that the classification of C. L. soap should control the classification of L. C. L. soap and that the Commission having held, as they claim, that the class 5 classification is the proper classification for C. L. soap it follows that the class 3 less 20 per cent classification is proper for L. C. L. soap, because under these classifications the same difference in rates between C. L. and L. C. L. soap is maintained as existed under the classification in force before the advance.

In the first place the Commission does not hold that the class 5 classification and rates are reasonable for C. L. soap.

It takes pains to expressly exclude any such inference. The Commission says:

"So long as most articles entitled to as low rates as carload soap are put in the fifth class and required to pay fifth-class rates, *we are not warranted, on the evidence before us, in condemning* the same rating for that commodity. This disposition of the case, however, will not authorize the retention of carload soap in fifth class if the classification of other articles with which soap is compared should be reduced. *Nor will anything now decided preclude the Commission*

from holding, in an appropriate proceeding, that fifth-class rates in this territory are excessive."

(R., bot. p. 81, top p. 82.)

No complaint was made and no issue presented to the Commission as to the relation between the classification and rate on C. L. soap and L. C. L. soap. As the Commission in the case of C. L. soap simply considered the relation in rates which should be maintained between it and other articles of C. L. traffic, so in the case of L. C. L. soap the question is presented as to the relation which should be maintained between that soap and other articles of L. C. L. traffic. The question is not what shall be the difference in rates between C. L. soap and L. C. L. soap, but whether the *increased* rate on L. C. L. soap is justifiable when compared with the rate on other L. C. L. traffic. In this connection we quote what is said by the court below on this point:

"*The classification of soap in less than carload lots is not controlled by the classification of soap in carload lots,* nor its reclassification by the maintenance of relative difference in rates between the two; but, on the contrary, the classification and reclassification of soap in L. C. L. lots should be controlled by the relation *it bears to other articles in less than carload lots*—that relation to be determined by the degree in which, in comparison with such other articles, its handling and carrying is, or may be, affected by the cost of service, competitive and commercial conditions, volume, density, distance, value, and risk of loss or damage."

"It is true that these elements must be considered in determining the classification of articles in carload lots, *but from a different standpoint.* A given article of traffic may be more or less desirable when shipped in less than carload lots than when shipped in carload lots. *Bulk, weight, form, manner of packing,*

etc., may materially affect the classification of articles to be carried in the same car when they might have little or no weight in the classification of a single article to be carried in carload lots. A single car may carry many different articles and, necessarily, the convenience, inconvenience, cost of handling, and carrying must be considered in fixing the rate which each should bear and in determining the class to which each should be assigned; but *the elements of disadvantage attending the combination of different articles in one shipment are eliminated from shipments of each article separately in carload lots,* and it follows that rates and classifications must be controlled by the character of the shipment; that shipments which include and combine different articles of traffic in less than carload lots require rates and classification necessary to meet the convenience, inconvenience, and cost of handling a carriage incident to such combination, *which do not attend the shipment of a single article in carload lots.* In other words, the classification of soap for carriage in less than carload lots should be based upon its relation to other articles for carriage in less than carload lots and not upon its relation to soap for carriage in carload lots." (Italics ours.)

(R., 1091.)

The court below further says:

"Common soap in less than carload lots was assigned to the fourth class in the first classification made under the act to regulate commerce, and remained there until the reclassification complained of, *and did not follow the variations of soap in carload lots*; and the replacing of soap in carloads in the fifth class did not justify the displacing of soap in less than carloads from the class in which it had been voluntarily maintained by the defendants for more than thirteen years."

(R., bot. p. 1091, top p. 1092.)

The significant fact cited by the court below in the above extract from its opinion, namely, that

soap L. C. L. *has not "been made to follow the variations"* in the classification of soap C. L., shows conclusively that the classification of soap C. L. has not controlled that of soap L. C. L. and that classification experts have not acted upon the theory that a fixed relation should be maintained between the classification of soap C. L. and that of soap L. C. L.

XXI.

IF CLASSIFICATION AND RATE OF C. L. SOAP SHOULD CONTROL CLASSIFICATION AND RATE OF L. C. L. SOAP, THE APPELLANTS FURNISH STRONG EVIDENCE IN THEIR CLASSIFICATIONS THAT C. L. SOAP BEING IN CLASS 5, L. C. L. SOAP SHOULD BE IN CLASS 4.

As we have seen, during the thirteen years from April 1, 1887, the date of the first Official Classification, to January 1, 1900, the date of Official Classification No. 20, in which the advanced classification complained of in this case was made, the appellants placed L. C. L. soap continuously in class 4 and during that time soap L. C. L. was in class 5, except when taken out of that class and placed in class 6 by order of the Commission.

(See p. 17, *ante*.)

In Official Classification No. 20 there are *259 articles*, which when shipped C. L. are in class 5, and when shipped L. C. L. are in class 4. These articles are named in the appendix to this argument. (R., 282.)

If any fixed relation should be maintained between the rates on C. L. and L. C. L. traffic the fact that 259 articles classed 5 C. L. are classed 4 L. C. L. tends strongly to show that those respective classifications were considered by the classification experts as establishing the proper relation.

Among these 259 articles, moreover, are a large number which are admitted by the railway experts

examined as witnesses to be analogous to soap L. C. L. in respect to the convenience and cost of handling at terminals. It is admitted that soap L. C. L. can be handled at the same or less expense and more conveniently than some of those articles, for example, lead and brick.

(Test. Bobinett, R., 167, 168.)

Mr. C. E. Gill, chairman of the Official Classification Committee and a leading witness for the appellants, testified that the difference in expense to carriers between C. L. and L. C. L. traffic in general resulted from the cost of handling, and admitted that in respect to convenience of handling and cost of transportation the following articles, all of which are class 5 C. L. and class 4 L. C. L., compare favorably with, or do not differ materially, from soap:

"Beans; tar; coal tar; alumina; alum; fish, pickled or assorted; glucose, shipped in boxes or barrels; grape sugar; putty; paint, in barrels; lead; potash; peas, dried and split; putty, in pulp; pewter; sheet iron; sled bottoms, etc."

(R., 242, 243.)

Soap, under the Western Classification, as we have seen, is class 5 C. L. and class 4 L. C. L.

(R., 53, 54.)

We submit that the actual practice of the appellants should have more weight than the estimates or mere guesses of railway officials as to the cost of handling L. C. L. traffic *in general*.

XXII.

EVIDENCE OF GREAT EXPENSE IN HANDLING L. C. L. TRAFFIC IN GENERAL DOES NOT EVEN TEND TO SHOW THAT C. L. SOAP BEING IN CLASS 5 L. C. L. SOAP SHOULD BE CLASS 3 LESS 20 PER CENT.

The evidence introduced in behalf of the appellants o show that C. L. soap being in class 5 L. C. L. soap hould be in class 3 less 20 per cent has only a remote, f any, bearing on that point. That testimony is imply to the effect that the handling of L. C. L. reight in *general* is much more expensive than the andling of C. L. freight. This is not disputed.

Proof (if it had been made) that the excess of L. C. L. ates over C. L. rates is not sufficient to cover the extra ost of handling L. C. L. traffic is as much proof that he C. L. rates are relatively too high as that the L. . L. rates are relatively too low. Manifestly, if the . C. L. rates do not exceed the C. L. rates to the xtent of the greater expense of handling the L. C. L. raffic, it may be because the C. L. rates are relatively oo high.

What the difference in expense is is not made to ppear by satisfactory evidence. The witnesses give stimates *as to the expense of handling L. C. L. traffic n general* and claim that these estimates are based n calculations from certain data in their possession, ut neither these calculations nor that data are pro- luced. Those estimates vary from 31 cents a ton o over 72 cents a ton.

(Test. Scaife, R., 227, 229; Connor, R., 179–181; Barnard, R., 113; Loomis, R., 219.)

XXIII.

THE EVIDENCE DOES NOT RELATE TO SOAP, BUT TO THE AVERAGE EXPENSE PER TON OF HANDLING L. C. L. TRAFFIC IN GENERAL.

L. C. L. Soap Above the Average as to Convenience of Handling and Therefore Below the Average as to Expense of Handling.

The testimony is that "some classes of freight can be handled a great deal cheaper than others."

(Connor, R., 180; Scaife, R., 227.)

Soap is shipped in boxes, whether C. L. or L. C. L., and because of the convenience of handling it is a desirable traffic. As to the characteristics of soap which make it a desirable article of traffic for carriers to handle, the Commission says:

"Common soap is packed in convenient form for handling by carriers, and it is heavy, compact, and not bulky in proportion to weight, in comparison with other grocery articles; its liability to damage is very slight; the risk is very light in case of wreck of train; a car can easily be filled with soap to its full capacity; it does not deteriorate in transportation; it furnishes a very large volume of traffic, as indicated by the amount manufactured; the material for its production is brought together from many parts of the country, and the soap is distributed everywhere, which indicates the length of haul to which it is subject; its distribution by railroads is as general as its use by individuals; as the latter universally participate in its

use, the former must as generally engage in its transportation; it is not tainted by offensive odors of other articles or filth of cars, and can therefore be transported in some cars that would be unfit for many grocery articles; it does not soil a car or affect other freight." The fifth class contains few, if any, more desirable articles than soap in point of convenience of handling and loading, and in this respect it is fully equal to package freight of any class. * * * (R., 60, 61.)

From this it appears that soap is above the average as to convenience of handling, and therefore that evidence as to the average cost of handling traffic *in general* can not indicate with any degree of accuracy the cost of handling soap.

It is well settled that the volume of an article of traffic transported is an element to be taken into consideration in fixing its rate—the greater the volume the lower the rate. *The volume of the soap traffic is greater than that of traffic in general.* The Commission finds:

"The volume of the soap traffic is very considerable. While no statistics are given showing even approximately the aggregate amount offered for carriage, it does appear that about 1,000,000,000 pounds of soap, equal to 500,000 tons, are annually produced in the United States, and of this tonnage much more than half is apparently produced in Official Classification Territory." (R., 61.)

XXIV.

CLAIM THAT L. C. L. RATES ON TRAFFIC IN GENERAL ARE "INADEQUATE" AND THAT L. C. L. TRAFFIC IN GENERAL IS UNPROFITABLE.

C. E. Gill, who, as before stated, is chairman of the Official Classification Committee and the principal witness for appellants on classification, testified that the advanced classifications of soap, C. L. and L. C. L., did not represent the difference in cost of handling such shipments. He further testified that the L. C. L. rates on traffic in general were "inadequate" and "absolutely unremunerative to the carrier." (R., 244, 245, 247.)

This is an admission that all L. C. L. classifications are wrong and that there was *no more ground for advancing the L. C. L. classification of soap than of any other L. C. L. traffic.* The increasing of the rate on L. C. L. soap under such circumstances *without increasing the L. C. L. rates on traffic in general, was an unjust discrimination against soap. This was one of the grounds of complaint before the Commission.* (R., 12.)

Under these circumstances, the proper course to be pursued by the carriers is that suggested in the following extract from the opinion of the court below:

"If it be claimed that prior classifications and rates have never been adequate to the costs of handling and carrying freight in less than carload lots, then there should be a general reclassification which would apportion the cost of service equally, or approximately so, among the different articles of traffic and between carload lots and less than carload lots thereof." (R., 1092.)

XXV.

THE QUESTION, ONE OF FACT, "PECULIARLY WITHIN THE PROVINCE OF THE COMMISSION."

The Commission found in effect that under the testimony before it, the advance in classification of L. C. L. soap from class 4 to class 3 less 20 per cent was without just excuse and subjected the soap traffic in the Middle West to an undue prejudice and disadvantage. This was a finding of fact, "peculiarly within the province of the Commission."

The court below sustained the findings of the Commission on the evidence before the Commission and further held that the evidence taken in court in behalf of the carriers did not rebut those findings. (R., 1091.)

Where the Commission has duly investigated the facts and the court below has sustained the findings of the Commission on such investigation, this court will decline to undertake an original investigation of the facts on its own account and will not set aside the findings of the Commission except in a clear case of error.

C., N. O. & T. P. Ry. Co. *v.* I. C. C., 162 U. S., 194;
L. & N. R. R. Co. *v.* Behlmer, 175 U. S., 675;
E. T., Va. & Ga. Ry. Co. *v.* I. C. C., 181 U. S., 27.

In C., N. O. & T. P. Ry. Co. *v.* I. C. C., *supra*, known as the "Social Circle case," this court refused

to make an original investigation of the facts and set aside findings of fact of the Commission, because, as the court said, "the question was one of fact peculiarly within the province of the Commission, whose conclusions have been accepted and approved by the Circuit Court of Appeals."

Substituting Circuit Court for Circuit Court of Appeals, this is strictly applicable to the present case.

The conclusions of the Commission, based on its findings of fact, prima facie correct.

The statute, as we have seen, *expressly* makes the findings of fact of the Commission *prima facie* evidence of the matters therein stated, but the courts have gone further and held that the *conclusions* of the Commission from those facts are to be held by the courts to be *prima facie* correct. In *I. C. C.* v. *L. & N. R. R. Co., et al.*, the United States Circuit Court for the southern district of Alabama says:

The findings of fact in the report of the Commission are made by law *prima facie* evidence of the matters therein stated, and *the conclusions of the Commission* based upon such findings are presumed to be well founded and correct, *and they will not be set aside unless error clearly appears.* The record does not clearly show that the Commission's findings and conclusions * * * are erroneous—are not in accordance with the law and the evidence, and the court should not overrule or in any other manner interfere with them. (102 Fed. Rep., p. 709.)

The above is quoted and approved in *I. C. C.* v. *L. and N. R. R. Co.*, 118 Fed. Rep., p. 622.

We respectfully submit that the decree of the Circuit Court should be affirmed.

L. A. SHAVER,
Solicitor for Appellee.

P. J. FARRELL,
Attorney.

APPENDIX.

OFFICIAL CLASSIFICATION NO. 20. EFFECTIVE JANUARY 1, 1900.

	Articles taking, 4 L. C. L.; 5 C. L.
1	Acetate of lime.
2	Actinolite ore.
3	Aluminal.
4	Anchors (iron), n. o. s.
5	Anchors, building, wrought iron.
6	Anvils (iron).
7	Argols.
8	Armor plate (iron and steel).
9	Asbestos ore.
10	Ashes (pearl or pot).
11	Axles (car or locomotive).
12	Axles (iron or steel), n. o. s.
13	Babbitt metal.
14	Band iron.
15	Barb wire.
16	Barium (chloride of).
17	Bath brick.
18	Beans, n. o. s.
19	Binding wire or wire ties.
20	Bisulphide of lime.
21	Bisulphide of soda.
22	Black lead.
23	Blue vitriol.
24	Boiler flues or plates (iron).
25	Boiler iron.
26	Bolts (iron).
27	
28	Box straps (iron, steel, or wire).
29	Braces, extension (iron or steel).
30	Brackets (telegraph).
31	Brake beams (iron).
32	Brake shafts of rods.
33	Brake shoes (iron).
34	Brake-shoe slugs (iron or steel).
35	Brick (enameled glazed).
36	Brick (stove lining).
37	Bridge material (wooden).
38	Bumpers (iron).
39	Bumping posts (railroad).
40	Candle tar.
41	Carbide of silicon.
42	Carboy stoppers (clay).
43	Car bolsters bearings.
44	Car bolsters caps (iron or steel).
45	Car couplers (automatic).
46	Car-coupler knuckles.
47	Car-journal boxes and covers.
48	Car-spring plates.
49	Car wheels (paper or iron).
50	Castings (locomotive cylinder).
51	Cattle guards (iron).
52	Caustic potash.
53	Center plates (car).
54	Coal tar.
55	Coke tar.

	Articles taking, 4 L. C. L.; 5 C. L.
56	Conduits (electric insulating, iron).
57	Same, cemented.
58	Same, terra cotta.
59	Same, clay.
60	Cores (iron).
61	Corner irons (car).
62	Crestings (galvanized iron) packed flat.
63	Crestings (iron in boxes or barrels).
64	Drilling compounds.
65	Dross (tin).
66	Elbow joints (iron and steel).
67	Fence posts (sheet iron).
68	Ferromanganese.
69	Fire kindlers.
70	Fire plugs (iron).
71	Fish (pickled or salted), n. o. s.
72	Flanges (wheel, iron).
73	Fleshings.
74	Flues (iron).
75	Foots (molasses, oil).
76	Frogs (railroad, iron).
78	Furniture stain.
79	Galvanized iron.
80	Gas pipe (iron).
81	Gas-pipe hooks (iron).
82	Gas retorts (iron).
83	Gas tar.
84	Glucose.
85	Glue stock or scrap.
86	Grape sugar.
87	Graphite or graphite ore.
88	Hangers (timber).
89	Hasps (iron or steel)
90	Hasp hooks (iron or steel).
91	Hasps with hooks (iron or steel).
92	Hay bands.
	Hides:
93	Calfskins (green).
94	Hide plates or scraps.
95	Hog skins (green).
96	Horseshoe nails.
97	Horse, mule, or ox shoes.
98	Hyposulphide of soda.
99	Ingot mold staples (iron or steel).
100	Insulator pins (telegraph).
	Iron and steel:
101	Billets, blooms ingots (n. o. s).
102	Angle iron.
103	Black plate.
104	Bolts (bridge or barge), 12 inches and over.
105	Bolts, nuts, rivets, staples, or washers (iron)
106	Bridge iron.

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Official Classification No 20. Effective January 1, 1900—Continued.

	Articles taking, 4 L. C. L.; 5 C. L.
	Iron and steel—Continued.
107	Castings (iron n. o. s., 15 pounds and over).
108	(Same securely wired in bundles.)
109	Castings (iron, n. o. s., boxes or barrels).
110	Ceiling (iron).
111	Ceiling moldings (iron).
112	Chain or chain cable (iron, loose).
113	Chain sprocket.
114	Chain belting.
115	Chairs (railroad).
116	Chain iron.
117	Corrugated sheet iron.
118	Cotton ties.
119	Cotton-tie buckles.
120	Crowbars.
121	Drawbars.
122	Drawheads.
123	Fence posts (cast iron).
124	Fish plates (railroad).
125	Forgings (iron).
126	Forgings (carriage).
127	Fronts (architectural).
128	Hoop iron.
129	Lathing (iron or steel).
130	Links and pins.
131	Lintels
132	Locomotive wheels and tires.
133	Nail plate.
134	Nails or spikes.
135	Nut locks.
136	Picket pins.
137	Picket points.
138	Pipe (cast iron).
139	Pipe (wrought iron).
140	Pipe balls.
141	Pipe fittings.
142	Planished sheet iron.
143	Plate (iron or steel), U. S. standard gauge.
144	Plates (architectural).
145	Pole caps.
146	Pole steps.
147	Splices, switches, and switch stands.
148	Rail brace.
149	Roofing (iron).
150	Sash weights (packed).
151	Shafting.
152	Sheet bars.
153	Sheet iron and steel.
154	Shingle bands.
155	Shovel blanks.
156	Shutters.
157	Singletree or doubletree irons (unfinished, packed).
158	Sinks (nested).
159	Skelp iron.
160	Skelp steel.
161	Spiegel iron and eisen.
162	Spools (paper, iron), empty.
163	Spring cotter or spring keys.
164	Stairs or stair work.
165	Stake pockets (car).
166	Standpipes.
167	Staples (iron, galvanized).
168	Stables (wire, in kegs).
169	Steel (in boxes or barrels).
170	Steel (in bundles, plates, or slabs).
171	Stopcock boxes.
172	Tack plate.
173	Taggers' iron.

	Articles taking, 4 L. C. L.; 5 C. L.
	Iron and steel—Continued.
174	Tamping bars.
175	Tank iron.
176	Tie plates (R. R.).
177	Timber hangers or stirrup irons.
178	Tin plate bars.
179	Toe calks.
180	Tubing (in rough).
181	Turn-buckles.
182	Tuyers.
183	Water pipe.
184	Wedges.
185	Weights (beds).
186	Weights (for hoisting elevators).
187	Wire (fence).
188	Wire (iron, packed).
189	Wire (in bundles or coils).
190	Wire (iron, galvanized).
191	Wire (mattress).
192	Wire (steel, in boxes, bundles, or coils).
193	Wire (steel, in barrels or casks).
194	Wire (telegraph).
195	Wire rods.
196	Journal boxes and covers.
197	Jute or jute lashes.
198	Jute butts.
199	Kindlers (fire).
200	Lag-screw bolts.
201	Lag screw.
202	Lead (nitrate of).
203	Lead (sublimed).
204	Lead (sugar of).
205	Lead (sulphate of).
206	Lentils.
207	Litharge.
208	Manganese.
209	Manila or sisal.
210	Millstones.
211	Molasses.
212	Mortar stains or colors.
213	Nitrate of soda.
214	Paints (dry, n. o. s., in kegs, half barrels, or barrels).
215	Paints (in oil, n. o. s., in kegs, half barrels, or barrels).
216	Paints (asbestos, asphalt, chemical-lead, paraffin, rubber, zinc, zinc oxide, in wood).
217	Same, dry.
218	Paints (earth, iron, metallic, mineral oil, in wood).
219	Same, dry.
220	Peas, (dried).
221	Peas (split).
222	Pea hulls.
223	Pipe (stove, sheet iron).
224	Pitch (n. o. s.).
225	Plumbago (in barrels or casks).
226	Plumbago facings (in barrels or casks).
227	Portable railway tracks.
228	Potash (n. o. s. in barrels and casks).
229	Potash (caustic in iron drums).
230	Powder keg heads, bottoms, and stoppers (sheet iron).
231	Putty (in bulk).
232	Railroad tie plugs (wooden).
233	Rail joints.
234	Roofing (tin).
235	Roofing (n. o. s.).
236	Roofing composition.
237	Rubber (scrap).
238	Saltpeter.
239	Smalts (painters').

Official Classification No, 20. Effective January 1, 1900—Continued.

	Articles taking, 4 L. C. L.; 5 C. L.		Articles taking, 4 L. C. L.; 5 C. L.
240	Sodium (sulphide of).	251	Ultramarine blue.
241	Spring bed ties (wire).	252	Potatoes and sweet potatoes.
242	Stove putty or cement.		Vehicles, viz:
243	Sulphate of iron.	253	Axles (iron or steel, n. o. s.).
244	Sirup (n. o. s.,) in wood.)	254	Bicycle forks (iron or steel, in rough).
245	Tacks (iron or strel, in boxes, kegs, or barrels).	255	Thimble skeins (iron).
246	Same, (in wooden boxes packed in cases).	256	Tires (carriage or wagon, iron or steel).
247	Tacks (wire, in kegs or barrels).	257	Wall finish (n. o. s.).
248	Tar (n. o. s., in barrels).	258	Wood filler (in kegs, half barrels, or barrels).
249	Terra cotta (for building).	259	Woods of value (logs).
250	Tin plate (n. o. s.).		

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No. 201.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

THE CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY ET AL., APPELLANTS,

v.

THE INTERSTATE COMMERCE COMMISSION, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

SUPPLEMENTAL ARGUMENT FOR THE INTERSTATE COMMERCE COMMISSION.

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SUPREME COURT OF THE UNITED STATES.

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vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

Brief for the Appellants in Reply to the Supplemental Brief for the Appellee.

In Southern Pacific Company *vs.* Interstate Commerce Commission, 200 U. S., 556, cited by the appellee, the court held that if the *facts* alleged and proved showed a violation of section 5, the court might enforce the order, although the Commission was of opinion that it was section 3 that was violated. The Commission's opinion, or even the complainant's charge, as to the section of the act that was supposed to be violated on a given state of facts, was a mere conclusion of law, and not part of the cause of action.

The case gives no support to the proposition that the Commission is at liberty to ignore the facts alleged and the admissions made by the complainant, and to decide, as

matter of fact, that the difference in rates between soap in car-loads and soap in less than car-loads established by Classification No. 20, as amended March 10, 1900, is "inequitable and unjust," when the complaint on which the parties went to trial alleged as matter of fact that it was the proper difference, and sought to establish it, "so as to maintain the proper relation and difference of rates between carload and less than car-lod lots" (R., 12), between which two classes the complaint alleged there was "a constant and sharp commercial competition" (R., 10).

Nor was the circuit court at liberty to enforce the order of the Commission, as it did, on the ground that "the classification of soap for carriage in less than car-loads should * * * not be based upon its relation to soap for carriage in car-load lots" (R., 1091), in the face of the allegation of *fact* in the complaint of the Procter & Gamble Company that they should be classified with reference to each other, because they were in constant and sharp commercial competition.

The opinion of the Commission concedes that soap in less than car-loads should be classified with reference to soap in car-loads, but holds, contrary to the admissions of the complaint and the undisputed evidence as to the extra cost of service, and its own findings in other cases, that the proper "difference" is the difference between class 4 and class 5, and that any greater difference is unjust and inequitable. That is the ground of its decision. There is no finding that any L. C. L. rate for common soap between any points on any of the defendants' roads is unjust or unreasonable in and of itself, nor is the order to discontinue any particular rate. The purpose and effect of the order is simply to establish the *relation* between all rates for soap L. C. L. and the rates, whatever they may happen to be, for the class (5) in which soap C. L. is placed.

LAWRENCE MAXWELL, JR.,
EDWARD COLSTON,
Counsel for the Appellants.

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Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, et al., *Appellants*,

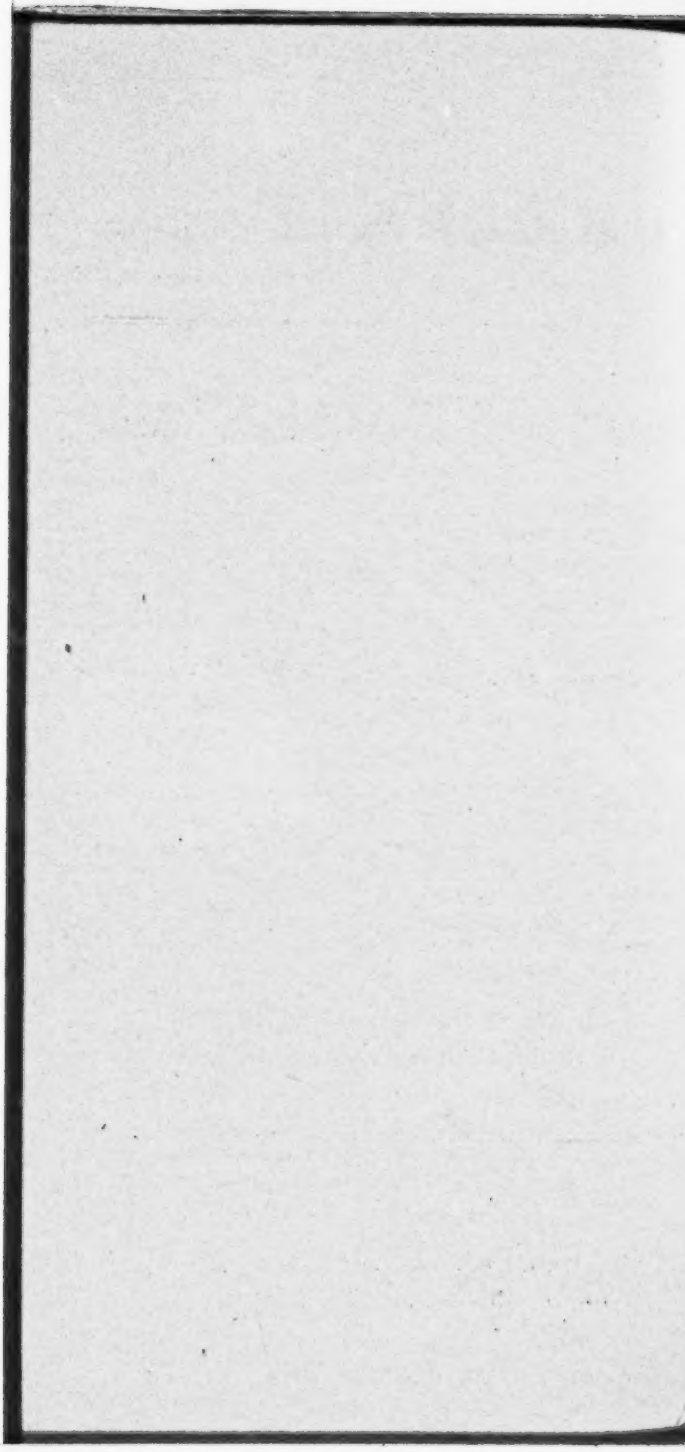
vs.

INTERSTATE COMMERCE COMMISSION.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

ORAL ARGUMENT OF EDWARD COLSTON, OF COUNSEL FOR APPELLANTS.

THE BARCLAY PRINTING CO., Strobridge Building, 108-118 W. Canal St., Cincinnati, O.



Supreme Court of the United States.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, et al., *Appellants*,

vs.

INTERSTATE COMMERCE COMMISSION, *Appellee*.

ORAL ARGUMENT OF MR. COLSTON FOR APPELLANTS.

I understand that I was given leave to print my oral argument and to submit it to the court in that form, which I now do.

This case comes into this court on appeal from the Circuit Court of the United States for the Southern District of Ohio, Western Division. Appeal is taken under the proviso of the act entitled "An Act to further regulate commerce with foreign nations and among the states," passed February 19, 1903. (Chap. 708, 32 Stats. at Large, Part I., at p. 849). The suit in the Circuit Court was brought by direction of the Attorney General (Rec. 1093), and the case therefore comes within the terms of above proviso.

Provisions of the Interstate Commerce Act entitled "An Act to regulate commerce" (24 Stats. at Large, 379) involved in this case.

Sec. 1 of said act provides that all charges for "any service rendered or to be rendered in the transportation of passengers or property * * * shall be reasonable and just; and every unjust and unlawful charge for such service is prohibited and declared to be unlawful."

Sec. 3 provides that it shall be unlawful for any common carrier subject to the provisions of the act "to make or give any undue or unlawful preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Sec. 13 of the act provides for investigation by the Commission of complaints "of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof." The investigation is to be had on application to the Commission by petition which shall briefly state the facts. Upon the filing of said petition the Commission is required to forward to the common carrier a statement of charges contained in said petition, and to call upon the common carrier to satisfy the complaint or to answer the same in writing within a time to be specified by the Commission. And it is further provided in said section that if the common carrier shall not satisfy the complaint within the time specified, "it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

Sec. 14 provides that it shall be the duty of the Commission, when such investigation is made, "to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are

based." And this section provides that in all judicial proceedings such findings shall be deemed prima facie evidence as to each and every fact found. This section also provides that all reports of investigations made by the Commission shall be entered of record and a copy furnished to the party who made the complaint and to any common carrier that may have been complained of.

Sec. 15 provides that if, in the investigation aforesaid, it shall appear to the satisfaction of the Commission, "that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, * * * it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation" within a reasonable time to be specified by the Commission.

Sec. 16 provides that when the common carrier "shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity, * * * alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter." This section further provides that if on such hearing it be made to appear to the court "that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed" it shall be lawful for the court, by writ of injunction or other proper process, to restrain the common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoin obedience to the same.

It will thus be seen that the investigation by the Commission is to be "of the matters complained of" in the petition. It is only when the common carrier refuses or neglects to obey a lawful order of the Commission that authority is given to apply to the circuit court, alleging violation of such order. That court is given power to hear and determine "the matter," that is to say, the violation or disobedience of a lawful order. The ultimate question in such cases is whether the order of the Commission was a lawful order or not. That is "the matter" which the circuit court is "to hear and determine."

HOW THIS CASE ORIGINATED.

In October, 1899, the classification committee of the railroads for that section of the United States known as Official Classification territory, being the territory bounded on the West by the Mississippi river and Chicago, on the South by the Ohio and the Potomac rivers, on the North by the Canadian frontier, and on the East by the Atlantic Ocean, made a re-classification of the articles, about 8,000 in number, that constitute the subject of railroad transportation in that territory.

In the record at top of page 565, Mr. A. H. McLeod, a witness before the Interstate Commerce Commission, said: "The committee went through the classification and recommended advances on a large number of articles, either from one class to another or from one class to one half of a class, you might say, as for instance from first to first and a half.

The articles that were the subject of transportation had been divided into classes numbered from one to six, both inclusive. Additional classes would be created by doubling some of those mentioned, such as "double first class," "double second class," and so on. The charges for transportation diminished from first class to sixth class by gradation.

This classification committee was termed the "Official Classification Committee;" and their classification was known as "Official Classification." The committee was composed of traffic officers of the leading rail lines in the territory mentioned. The membership of the committee was chosen so as to represent properly the different sections of Official Classification territory; such as New England States, Atlantic States, and the Middle West. The purpose of this committee's classification was to obtain a uniform classification for that extensive and commercially important part of the Union, instead of having a number of classifications, applicable to one road, or perhaps a few roads only.

The formation of this Official Classification Committee, upon the basis above named, was originated by Albert Fink, a man of exceptionally high standing and high reputation in railroad transportation matters. (See record, page 789)

This committee was formed after the passage of the Interstate Commerce Act of February 4, 1887, which became effective April 5 of that year. The first classification was made in April, 1887. Naturally it was somewhat hastily compiled without the benefit of the fuller experience the committee derived from the actual working of their classifications. The committee was composed of fifteen members. When the committee would make a classification it was recommendatory to the various railroads; and they adopted it or not as their judgment suggested. This committee was a standing committee; had a chairman and a place of business in New York City, where it held regular meetings and from time to time attended to revisions of the classifications as occasion would suggest. Of course, the personnel of the committee changed from time to time.

From the date of the first classification, which was April, 1887, to the Fall of 1899, nineteen successive classifications had been made by this committee.

Towards the end of 1899 there had been a great increase in the cost of labor and of all articles entering into railroad uses, which increase constituted a permanent addition to the cost of conducting railroad operations; and it had to be reckoned with by the railroad managers. I may mention a few items of increased cost:

The cost of grading in 1899 over 1898 was 30 per cent. (Rec. p. 632).

The cost of track superstructure per mile increased from $7,500 to $9,500. (Rec. p. 636.)

The cost of bridges increased 40 per cent. (Rec. p. 634.)

The cost of cross ties increased 22 per cent. (Rec. p. 663.)

The cost of steel rails increased from $18 per ton in 1898 to $33 per ton in 1899 (Rec. p. 663).

The cost of locomotives increased 40 per cent. (Rec. p. 503.)

There are tables showing the percentage of increase of cost of all car material and of other items (Rec. 746, 751).

To meet this emergency a revision of the classification, with a view of increasing the revenue of railroads, was deemed necessary. Accordingly a revision of the classification by the Official Clasification Committee was made in the latter part of 1899, to be effective January 1, 1900. It was adopted by the railroads in Official Classification territory. This was Classification No. 20. It gave rise to the present controversy.

The controversy was begun February 24, 1900, by the Procter & Gamble Company, an extensive soap manufacturer at Cincinnati. It complained of the re-classification of common or laundry soap, which was changed by Classification No. 20 from sixth class in car loads and fourth class in less than car loads to fifth class in car loads and third class in less than car loads.

It should be borne in mind that on March 20, 1900, after

the filing of the Procter & Gamble complaint, and on representation and protest from other shippers, another class was created for less than car load traffic, known as 20 per cent. less than third class but not lower than fourth class (for convenience called Rule 26). The reason why this was done is explained in the testimony taken before the Commission, as follows:

"The Chairman: It appears that after Classification No. 20 went into effect there was a conference between the representatives of the railroads and a large number of shippers in reference to the new classification. At that time the third class had not been modified by 20 per cent. reduction, had it —and was it soon after that meeting?

Mr. McLeod: It was not modified until after the conference and a subsequent meeting of the roads to consider all the complaints.

The Chairman: They had this conference with the shippers. Then the roads had another meeting and amended the classification by making third class 20 per cent. less?

Mr. McLeod: Yes, sir." (Rec. p. 568.)

The changes made by Classification No. 20 were by no means confined to soap, but covered over seven hundred articles. Fifty-six articles (car loads) were advanced to fifth class from sixth out of about two hundred articles commonly carried in car loads at sixth class rates in preceding classification. Three hundred articles were moved to third class from fourth class, one hundred and ninety articles to second class from third class, and there were advances made in other classes. (See Rec. p. 565.)

When third class less 20 per cent. not lower than fourth class (Rule 26) was created for less than car loads, which was done for the first time in this classification, soap in less than car load lots, and numerous other articles, over forty in number, which take fifth class in car loads, among them, coffee, sugar, fish (smoked or canned), and canned fruits and

vegetables, were reduced along with soap from third class to third class less 20 per cent. not lower than fourth class. (See Gill, Rec. p. 239, and Commission's Report, pp. 69-70.)

What the petition of Procter & Gamble alleged.

It is of first importance to note the character of the Procter & Gamble complaint. (Rec. p. 7.) In paragraph 3 of that complaint (Rec. p. 9) the statement is made that the carriers in Official Classification territory "adopted a certain classification of articles and property for shipment over their lines, according to which, rates for charging and exacting payment for services rendered for transportation of property and merchandise and in connection therewith were fixed at a certain rate for each class of articles therein set forth. Said classification is known and designated as 'Official Classification No. 20,' and is upon the files of this Commission, and contains six general classes of articles numbered therein from 1 to 6. Upon said classes the defendants have and do fix and maintain decreasing rates in their numbered order."

The precise complaint made of Classification No. 20 was (Rec. top of p. 10) that the carriers had therein wrongly placed and maintained common soap in car load lots in said fifth class instead of said sixth class, "where it properly and rightly belongs," and had wrongly placed and maintained such soap in less than car loads in said third class instead of said fourth class, "where it properly and of right belongs."

The complaint then stated that the difference in rate between third class and fifth class "is very much greater than between said fourth and sixth class."

The complaint also stated that common soap in less than car load lots "is and always has been in constant and sharp commercial competition with common soap in car load lots." (Id.)

The complaint then averred that this Classification No. 20

resulted in charging the complainant an unjust, unreasonable and unlawful rate for transportation services, and that it subjected the soap traffic to an undue and unreasonable prejudice and disadvantage, and subjected soap traffic in less than car load lots to an undue and unreasonable prejudice and disadvantage in commercial competition with soap in car load lots. (Id.)

The complaint further alleged (See bottom of p. 12 of Rec.) that "the same," that is, soap, "should, at least, have remained in sixth class in car load lots, as ordered by this Commission as aforesaid, and in fourth class in less than car load lots, so as to maintain the proper relation and difference of rates between car load and less than car load lots."

It will be observed that there is in this complaint no allegation or intimation of any undue or unreasonable advantage, or undue or unreasonable prejudice or disadvantage as between localities. But that was the principal ground on which the Commission found that Rule 26 violated the Act.

In other words, there is nothing to bring the case within section 3 of the Interstate Commerce Act (February 4, 1887).

The gist of the complaint is: (1) that this change in classification made the rates unjust and unreasonable; (2) that it subjected soap traffic to an unreasonable prejudice and disadvantage as compared with other traffic; (3) that it subjected soap in less than car load lots to an undue and unreasonable prejudice and disadvantage in competition with soap in car loads; (4) that "to maintain the proper relation and difference of rates between car load and less than car load lots" the latter should be fourth class and the former sixth class. (See bottom of p. 12 of Rec.) The Commission in its conclusions (See bottom p. 81 of Rec.) said:

"We regard the primary and controlling question in this case as a question of classification; that is, of relative rates, and dispose of it accordingly. In that view it is sufficient to

hold, that car load soap is not improperly placed in fifth class, and that fifth class rates, therefore, are not shown to be unlawful."

This experienced shipper (Procter & Gamble Co.), whose product the Commission finds was 100,000,000 pounds of soap per year, one tenth of the entire product of the United States, concedes by the allegations of its petition that the correctness of classification between car load soap and less than car load soap depends upon the rate relation between those two competing articles; and that the rate relation is correctly represented by the difference between the rates applicable to fourth class (L. C. L.) and those applicable to sixth class (C. L.) And the Commission having found, as we have just shown, that the controlling question in the case is one of classification; that is to say, one of relative rates, and having further found that fifth class rates for car loads is not unlawful, it follows that when we show from the evidence, as we do show, that the rate relation between fifth class and Rule 26 is not greater, but is in fact less, than the difference in rate between fourth class (L. C. L.) and sixth class (C. L.), we have shown that Rule 26 is a correct classification; and consequently that the Commission was wrong in holding that Rule 26 was a violation of the Act; and its order based on such supposed violation, is not a "lawful" order.

The chief factor in classification of soap as between car loads and less than car loads.

The chief factor in classification of soap as between car loads and less than car loads is the increased expense of carrying soap in less than car load lots over carrying it in car loads. As we have stated, these two soaps are active competitors. The big factories which distribute their product in car load lots sell it in the same markets as the smaller producer who distributes his product in less than car load lots. Ship-

pers' expense of distribution, as far as transportation is concerned, ought to be equalized as near as may be. This is accomplished when the increased cost of handling in less than car loads over the cost of handling in car loads is not exceeded by the difference between the rates for less than car loads and for car loads. So that if the present rate divergence between the two is not more than enough to make up such difference of cost of handling by the respective methods, it must follow that we have reached the right result in the classification adopted, and have done no injustice to the shipper in that respect.

Soap shipped in car loads and soap shipped in less than car loads present the same transportation features, except in the matter of cost of moving. To illustrate this let us take some other articles; for example, take sulphuric acid. When shipped in car loads, and the acid spills by breakage, that represents the whole of the damage; whereas, if one or two or more of the carboys of the acid be shipped in less than car load lots, it will or may be placed in the same car with a great number of other kinds of freight, much of which, very valuable in character, might be destroyed by the breaking of the vessel holding the acid. The carrier must be compensated for incurring that risk. This compensation he attempts to provide for by making a wide divergence between the price of carrying acid when shipped in car loads and when shipped in less than car loads. When shipped in car loads the carrier puts it in fifth class, taking a comparatively low rate, and when shipped in less than car loads he puts it in first class, or perhaps double first class. This classification is intended to have the double effect of discouraging less than car load shipments of commodities that are dangerous when so shipped, and of compensating the carrier for the increased risk arising from that mode of shipment.

Hay affords another illustration. In car loads it is dan-

gerous only to itself; and in less than car loads it is a menace, owing to its inflammable character, to other more valuable freight.

But soap is the same as to every transportation characteristic, save that of expense, whether shipped in car loads or less than car loads. The same kind of boxes are used in each instance; and the cubic space occupied per box is the same; although perhaps soap should pay something, in addition to mere cost of transportation, to represent its liability to damage by other articles in the same car.

A mass of testimony was taken by the appellants in the Circuit Court showing that the extra cost of handling soap in less than car loads is more than the difference between the two classes, namely, third class less 20 per cent. and fifth class. This testimony is found in the record, pp. 107 to 271, and is entirely uncontradicted. The appellee took no testimony in the Circuit Court. This testimony shows that the additional items of expense of less than car load business consist in station facilities, hire of clerks and accountants and of ordinary labor used in loading and unloading, and the additional cost in movement of trains, and in transfer en route of the traffic. In car load shipments the shipper loads and the consignee unloads; the work being done in yards or on side track. But for the less than car load business, there would be no freight depots at all. It will not be necessary for the court to read that evidence because the Circuit Court finds that "the testimony taken since the commencement of this suit shows that the cost of service for handling and carrying freight in less than car loads greatly exceeds the cost of handling and carrying it in car load lots." (See bottom of p. 1090, Rec.)

I desire to call attention to the important fact that the purpose of the Classification Committee in making this new class

(third class less 20 per cent. not lower than fourth class) was to make the difference in rates between that class and fifth class the same as the difference between fourth class and sixth class in the former classification. This is fully explained in the testimony of McLeod before the Commission, and by the statement of the Chairman of the Commission. (See Rec. pp. 572-3; and Rec. p. 613 about middle of page.) And that it had that effect is shown by the evidence of McDonald, principal witness for Procter & Gamble. See Rec. top p. 418.

The grounds upon which the Interstate Commerce Commission found that third class less 20 per cent. not lower than fourth class was an improper classification for less than car load soap.

The "matter" to be determined by the Circuit Court in this case was whether the order of the Commission enjoining carriers from charging rates equal to 20 per cent. less than the rates "fixed by them for the transportation of articles designated as third class in their established freight classification called and known as Official Classification," and "which said 20 per cent. less than third class rates for the transportation of common or laundry soap in less than car loads" were "found and determined in and by said report and opinion of the Commission to be in violation of the act to regulate commerce," was a lawful order. (See Order of the Commission, pp. 83-4 of Rec.)

Section 16 of the act provides that when the common carrier shall refuse "to pay or perform any lawful order or requirement of the Commission, it shall be lawful for the Commission to apply in a summary way by petition to the Circuit Court of the United States sitting in Equity," etc., and that said court shall have the power to hear and determine "the matter;" and that if it be made to appear to the court on such hearing that "the lawful order or requirement

of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction," etc. So, the lawfulness of the order is the matter to be determined in such court proceeding. The lawfulness of the order of the Commission means the correctness of the order of the Commission. The court proceeding is a mode of review of that order, although additional evidence may be heard in such court proceeding. It is therefore proper to consider the grounds upon which the Commission based its said order, as its correctness was the matter, and the only matter before the Circuit Court.

The Commission did not find that the rate divergence between fifth class in car loads and 20 per cent. less than third class was too great; or that it was greater than that between fourth class and sixth class. It did not find that the rates under Classification No. 20 were either unreasonably high for car loads nor for less than car loads; nor did it find that those rates created a prejudice in favor of one kind of freight as against another kind. Those were the only grounds of complaint alleged by the Procter & Gamble Co. in its petition filed with the Commission. On the contrary the Commission says, after disposing of the matter of classification of car loads:

"This disposition of the case, however, will not authorize the retention of car load soap in fifth class if the classification of other articles with which soap is compared should be reduced, nor will anything now decided preclude the Commission from holding, in an appropriate proceeding, that fifth class rates in this territory are excessive."

The Commission did not pass upon the question whether rates were too high, but confined itself to the question of classification, which was purely a matter of relation.

The Commission placed its finding, that third class less 20 per cent. constituted a violation of the Interstate Commerce Act, upon the ground that

"The new class inserted in the Official Classification of March 10, 1900, whereby 20 per cent. less than third class but not lower than fourth class rates are provided for less than car load soap and numerous other articles, operates with respect of soap, as above found in this case, to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advances in less degree, or not at all, the less than car load rates paid by soap shippers in New York City and other parts of the East. In other words, the application of a fixed percentage to varying and different rates has the effect of changing the relation of rates which before prevailed on shipments made by complainant, and its competitors in the East, to common territory." (See Rec. p. 82, second par. from top.)

But, in the absence of the fact that the former less than car load rates out of Cincinnati were as high as such rates out of New York, less than car load shippers "in the section of country about Cincinnati," had no vested right that their less than car load rates should not be advanced over their former rates. Nor had they a vested right that, in case of such advance as to them, "soap shippers in New York City and other parts of the East" should have their less than car load rates advanced over their former rates, in equal degree. There was no violation of any provision of the Interstate Commerce Act involved in the mere fact that soap shippers "in the section of country about Cincinnati" paid, under Classification 20, more than they paid under former classification, and that "soap shippers in New York City and other parts of the East" did not pay more, or as much more. Indeed, it is utterly immaterial that the Cincinnati shipper was subjected to an increase over his former low rate, which did not occur to the New York shipper for the reason that his former rates were higher than the rates out of Cincinnati. The material question is; does this new classification make

the Cincinnati shipper pay more money for the same amount of transportation service than the New York shipper pays? It is easy to show that he does not do so. For that purpose we have prepared tables based on distances out of New York and distances out of Cincinnati. These tables have been printed and submitted as part of appellants' argument. These tables are based upon two maps or charts used by the Procter & Gamble Co. in the trial of the case before the Commission, now found at pp. 741 and 742 respectively, of the printed record. These tables show the distances from Cincinnati and New York, respectively, to the points named; the points out of New York being about eighty in number and out of Cincinnati about one hundred and seven; and the tables show the rates for third class, third class less 20 per cent., and for fourth class, and the average rate per mile for each respective class from Cincinnati and New York, respectively, to the respective places named in the tables. A comparison of these average rates shows that both fourth class and third class less 20 per cent. rates out of New York are higher than out of Cincinnati. These tables show that the rate per mile out of New York on third class less 20 per cent. is .12013; on fourth class is .1168, and out of Cincinnati third class less 20 per cent. is .1054, and fourth class is .0898. This shows conclusively that the New York rates are higher than the Cincinnati rates. It shows conclusively that the supposed discrimination against Cincinnati does not exist. The truth is, that under prior classification Cincinnati territory had an advantage over New York territory, and still retains it. Although a Cincinnati shipper may be required to pay more money than formerly, still he does not pay more, if we take the New York rates as the criterion.

The supposed prejudice to Cincinnati locality and advantage to New York locality, on which the Commission based its conclusion of existence of discrimination, rests upon the fact

that the 20 per cent. less than third class rate, when applied to rates for certain distances from New York City, caused no increase or a less increase over fourth class than occurs for like distances when the shipment is from Cincinnati. From this fact the Commission found the Cincinnati shipper is advanced over fourth class more than the New York shipper is advanced for like distances over fourth class; and this the Commission claimed constituted a discrimination against the Cincinnati shipper. To illustrate: suppose for a distance of 100 miles out of New York fourth class rate is 40 cents, and that 20 per cent. less than third class happened to be 40 cents; then we say the New York shipper pays no more than he did before. He has not been raised. But if on a shipment from Cincinnati for a distance of 100 miles the fourth class rate be 30 cents, and 20 per cent. less than third class be 32 cents, it will happen that the Cincinnati shipper pays 2 cents more than he did before. This mere coincidence was paraded by Procter & Gamble in their evidence (although not mentioned in their complaint, wherefore the introduction of said evidence was objected to, see Rec. p. 316) as an advance of their rates, while the New York shipper had no advance; and it was claimed that it constituted a discrimination against the Cincinnati shipper. But, as I have shown, there is no discrimination at all. On the contrary, this new classification of less than car load lots is an approximation towards equalizing rates for the two territories. The supposed discrimination grows out of the fact that fourth class rates out of Cincinnati were less than rates for like distances out of New York. This brought about the result that the percentage reduction from third class would not in many instances bring the rate in Cincinnati territory as low as fourth class, while it would have that effect in New York territory where fourth class rates were higher.

The fallacy of the Commission in finding that this consti-

tuted a discrimination that was a violation of the act, is further shown by one of the illustrations which the Commission itself used. At p. 72 of the record the Commission says that the fourth class rate on soap from Cincinnati to Boston was 34½ cents, and that under the revised classification (20 per cent. less than third) it is 38½ cents; and so, the Commission say, the Cincinnati shipper to Boston has been raised 4 cents per 100 pounds. But, say the Commission, the rate from New York to Boston, fourth class, is 19 cents, and the rate ascertained by deducting 20 per cent. from third class rate is 19 cents also; thus the New York shipper has not been raised over his former rate, while the Cincinnati shipper has suffered a raise of 4 cents. Singularly enough, the Commission failed to notice that even at 19 cents the New York shipper pays for the carriage of his soap much more per mile, and therefore much more for the service rendered, than the Cincinnati shipper pays for the carriage of his product. This is owing to the difference in distances between the two places. It is about three times as far from Cincinnati to Boston as it is from New York to Boston, and the Cincinnati man should pay about three times as much freight money as the New York man; but instead of that he pays only twice as much.

What difference can it make that the shipper is raised over some old rate, if, notwithstanding he pays no more than he ought to pay, and no more than competing territory pays for the same transportation value?

It is obvious that there is no support whatever for the conclusion that the Commission comes to that there is undue and unreasonable prejudice created against Cincinnati territory by this percentage classification.

The essential thing is the proper rate relation between car load shipments and less than car load shipments, the two

soaps being active competitors. And the Commission having held that car load shipments are properly in fifth class, it only remains, in discovering the proper classification for less than car load shipments, to ascertain whether the rate relation existing between third class less 20 per cent. and fifth class, under present classification, is the same as the rate relation that existed between fourth and sixth class under former classification; with which the Procter & Gamble Co. was content, as stated in its petition. For this purpose we used the tables found at pp. 767 and 768 of the record. From them we see that the average present fifth class rate from Cincinnati to twenty-three points is 16.4, and on third class less 20 per cent. the average rate is 22.7. The difference between these is represented by 6.3. The said sixth class rate is 13.4, and the said fourth class rate is 19.4, the difference being represented by 6. It thus appears that third class less 20 per cent. is 38 per cent. greater than present fifth class, but that fourth class is 44.7 per cent. greater than sixth class. So that the rate relation is in favor of the new classification.

McDonald, traffic manager of the Procter & Gamble Company, says that the average increase effected by Classification No. 20 is 17½ per cent. on L.C.L. soap and 20 per cent. on C. L. soap. Rec. 411, 412.

Another ground stated by the Commission for its conclusion (Rec. p. 82) is "that soap in less than car loads always had fourth class rates until January 1, 1900." In other words, until the present classification. From this the Commission seems to have inferred that because the railroads put less than car load soap in fourth class it properly belonged in fourth class and could never be taken out of that class. This shows in a marked degree the confidence which the Commission seems to have in the correctness of the judgment of the railroads on the question of proper classification. By parity of reasoning, which the Commission, however, failed to ob-

serve, the judgment of the same parties, exercised thirteen years afterward, that soap should be placed in another class because of changed conditions in the meantime, was entitled to equal weight. Surely the judgment of the Classification Committee with its fuller experience was as good in 1900 as it was in 1887.

I presume the argument is that placing soap in fourth class may be taken as an admission against interest on the part of the railroads. But it will not be fair to take a part of an admission without the whole of it. The complete admission would be that fourth class was proper during pending conditions, and during the time it was maintained, but that, as conditions have changed, third class less 20 per cent. was proper in 1900.

If we judge the Commission itself, by the argument which it has applied in this case to the conduct of the railroads, we find that from June 22, 1891, to January 1, 1900, a period of nine years, soap in car load lots was put, by order of the Commission, in sixth class. And so, during that period of nine years the relation of car load soap and of less than car load soap was that of sixth class to fourth class. The Commission is solemnly on record as deciding that the proper relation of these two soaps is expressed by the ratio of sixth class in car loads to fourth class in less than car loads. That rate relation is not prejudiced by the present classification (No. 20) because, as already stated, the difference between fifth class and Rule 26 is the same as or less than the difference between sixth class and fourth class in preceding classification.

In the last paragraph on p. 69 the Commission in its findings stated that "a large number of articles in Official Classification territory are fourth class in less than car loads and fifth class in car loads." From this we suppose the inference is intended that soap ought to be in the fourth and in the

fifth class. But the answer is that the articles that are in fifth class for car load rating, and in classes higher than fourth for less than car load rating, are more numerous than or as numerous as those in fourth and fifth. So that there is no force in this suggestion of the Commission.

The Commission also states, and I suppose it is to be taken as a reason for its conclusion, that Western Classification uses fourth and fifth classes, respectively, for soap in car loads and less than car loads, and that the Southern Classification makes no difference whatever between car load soap and less than car load soap. But I submit this furnishes no ground for doubting the correctness of Official Classification. This difference in classification is to be accounted for by a difference in circumstances due to geographical and commercial conditions. If these circumstances did not exist we would not have the classification boundaries that we now have; but we would have uniform classification throughout the entire union. But that has not yet been found practicable. Moreover, why suppose that the judgment of the Western Classification Committee or of the Southern Classification Committee is better than that of the Official Classification Committee?

It does not appear how many classes there are in Western Classification or in Southern Classification, or what the difference is between class 4 and class 5 rates in Western Classification, or what other commodities are in class 4 and in class 5, or what rates are applied to either of those classes. To say, therefore, that soap L. C. L. is placed in what is called class 4 in Western Classification and C. L. in what is called class 5 has no significance, because it does not indicate what rates per mile either pays or what the difference in rates is between the one and the other.

From the foregoing I claim it is apparent that the reasons stated by the Commission are insufficient and incorrect. They

are the result of a misconception of the undisputed evidence in the case. This is particularly so in regard to the conclusion of the Commission that,

"the application of a fixed percentage to varying and different rates has the effect of changing the relation of rates which before prevailed on shipments made by complainant, and its competitors in the East, to common territory."

The fallacy of this position is apparent, and calls for the exercise of the principle stated by this court in Darlington vs. Turner, 202 U. S. at p. 220, as follows:

"We bear in mind the rule that where both courts below have found a particular state of facts, we do not disregard them except upon the conviction that the lower courts clearly erred in their conception of the weight of the evidence. Now, coming to consider the evidence in the light of this rule, we are constrained to the conclusion that the premise upon which the courts below acted, that is, the existence of a list of notes left by Tracy, is without any support in the evidence, and, indeed, rests upon a mere mistaken assumption."

The Opinion of the Circuit Court.

The Circuit Court merely affirmed the conclusions of the Commission, without adding to them any support. The court failed to recognize the importance of the principal element which should be considered in the classification of soap as between car loads and less than car loads, namely, the difference in cost between the two modes of transportation. The learned court did not allow that consideration a controlling influence. On the contrary the court said that it was not a controlling feature. The court used this language:

"In other words, the classification of soap for carriage in less than car load lots should be based upon its relation to other articles for carriage in less than car load lots, and not upon its relation to soap for carriage in car load lots." (See Rec. p. 1091 near bottom.)

But the court entirely failed to show that soap, when put in third class less 20 per cent., was not in its proper relation to other articles.

The court, while saying that the classification of soap in car loads and in less than car loads, did not depend upon the relation of the two, but upon the relation of soap to other articles, utterly failed to show in what way Rule 26 violated such relation of soap to other articles.

I submit that the decision of the Circuit Court should be reversed.

EDWARD COLSTON,
Of Counsel for Appellants.

February 11, 1907.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 201.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR THE APPELLANTS IN REPLY TO THE SUPPLEMENTAL BRIEF FOR THE APPELLEE.

LAWRENCE MAXWELL, JR.,
EDWARD COLSTON,
Counsel for the Appellants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25210

1.

NO PLEADINGS NECESSARY BEFORE THE COMMISSION.

Section 13 of the commerce act provides:

"Said Commision * * * *may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.*"

2.

If pleadings were necessary, the answers of the defendants to the complaint before the Commission put in issue the reasonableness of the class 3 less 20 per cent rate as applied to L. C. L. soap.

The complaint before the Commission, so far as the advance in classification of L. C. L. soap was concerned, related to the class 3 rate. But the defendants, after the complaint had been filed, abandoned the class 3 rate and substituted therefor the class 3 less 20 per cent rate, and in their answers filed before the Commission they set up this class 3 less 20 per cent rate, and *alleged that it was a reasonable rate.*

In the answer of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company it is alleged:

"That the classification of soap, which became effective on March 10, 1900 (the class 3 less 20 per cent rate), established *reasonable* and relative rates for the service to be performed in the transporta-

tion of said article (L. C. L. soap); that said revised classification *will not subject complainant or the traffic in soap to any undue or unreasonable prejudice or disadvantage and will not be in violation of any of the provisions of the act to regulate commerce.*" (R., bot. p. 20.)

See, also, answers of Lake Shore and Michigan Southern Rwy. Co., R., 25.

New York Central and Hudson River Rwy. Co., R., 31.

B. and O. S. W. R. R. Co., R., 40.

The reasonableness of this class 3 less 20 per cent rate was contested before the Commission by the complainants, the Proctor & Gamble Company, and it became the sole issue so far as L. C. L. soap was concerned.

The testimony before the Commission and in the court below relates to this class 3 less 20 per cent rate, and the Commission in its order in question in this case forbids that rate, the language of the order being that the defendant railway companies "cease and desist on or before the 15th day of June, 1903, from charging, demanding, collecting, or receiving for the transportation of common or laundry soap in less than carload quantities charges or rates per hundred pounds *equal to 20 per cent less than rates fixed by them for the transportation of articles designated as third class in their established freight classification*, called and known as the 'Official Classification,' which said 20 per cent less than third-class rates for the transportation of common or laundry soap in less than carloads are found and determined in and by said report and opinion of the Commission to be in violation of the act to regulate commerce."

3.

In the brief filed by the attorney for the Baltimore and Ohio Southwestern Railroad Company and the Baltimore and Ohio Railroad Company before the Commission the following statement is made as to the nature of the complaint before the Commission:

"Stripped of verbiage, the complaint is that carload soap by being placed in fifth class and less than carload soap by being placed in third class, 20 per cent off (Official Classification No. 20, effective January 1, 1900, modified March, 1900), *is subjected to unjust and unreasonable charges for transportation services rendered.*"

The defendants had their "day in court" before the Commission on this question and should be held to be estopped from denying that the reasonableness of the class 3 less 20 per cent rate was in issue before the Commission.

4.

ISSUE UNDER THE PLEADINGS IN COURT.

The proceedings in court being *de novo*, the question is What is the issue presented by the pleadings in court? The bill of complaint filed by the Interstate Commerce Commission in the court below, in Paragraph IX, alleges—

That the action of the defendants (appellants) in raising the classification of common or laundry soap L. C. L. from class 4 to class 3 less 20 per cent resulted in unreasonable and unjust rates in violation of section 1 of the act to regulate commerce, and also in an undue and unreasonable

preference and advantage, and in an undue prejudice and disadvantage in violation of section 3 of that act. (R., 4.)

The defendants, in their answers filed in court, traverse these allegations.

Ans., B. & O. R. R. Co., R., 88.
Ans., B. & O. S. W. R. R. Co., R., 90.
Ans., Cinn., H. & D. Ry. Co., R., 103.
Ans., N. Y. Cent. & H. R. R. Co., R., 93.
Ans., C., C., C. & St. L. Ry. Co., R., 97.
Ans., L. S. & M. S. Ry. Co., R., 101.

5.

THE PROCEEDING IN COURT DE NOVO.

The following are a few of the cases on this point:

The courts have the power to hear these cases upon "other issues, pleadings, and facts than those presented to the Commission."

(*I. C. C.* v. *C., N. O. & T. P. Ry. Co.*, 56 Fed. Rep., pp. 934, 935.)

Congress intended in these cases "to vest in the courts a large discretion," and it is the duty of the courts as courts of equity "to do justice in the premises."

(*I. C. C.* v. *C., N. O. & T. P. Ry. Co.*, 64 Fed. Rep., top p. 985.)

"The court is not the *mere executioner of the orders of the Commission*," but "the suit is an original and independent proceeding," and "the court is not confined to a mere examination of the matter as heard by the Commission, but proceeds to hear the complaint *de novo*."

(*Shinkle, &c., Co.* v. *L. & N. R. R. Co.*, 62 Fed. Rep., p. 693.)

(See also *I. C. C.* v. *Southern Pac. Co. et al.*, 123 Fed. Rep., p. 601.)

6.

THE COURT NOT CONFINED TO GROUNDS TAKEN BY THE COMMISSION.

It is immaterial whether the Commission based its order on the ground that the advanced rates, C. L. and L. C. L., did not maintain the proper *relation* between C. L. and L. C. L. soap, or upon the ground that the advanced rate on soap L. C. L. was unreasonable in itself and subjected soap L. C. L. to an undue prejudice or disadvantage.

In *Southern Pacific Co.* v. *Interstate Commerce Commission* it was objected on the part of the defendants that the Circuit Court had no authority to decree the enforcement of the order involved in that case upon any other ground than that taken by the Commission itself. The court, in overruling this objection, says:

"We think that the court was not confined to those grounds" (grounds named by the Commission), "and if the court found the rule was, in itself, *for any reason*, illegal as a violation of the act, the order might be valid and be a lawful order, although the Commission *gave a wrong reason for making it. If it held the rule to be a violation of one section, the order to desist might be valid, if, instead of the section named by the Commission, the court should find that the rule was a violation of another section of the act.*"

(*Southern Pacific Co.* v. *I. C. C.*, 200 U. S., bot. p. 556.)

7.

The reasonableness of the class 3 less 20 per cent rate was the controlling issue. The former rate being presumed, from its long maintenance,

to be reasonable, and no valid excuse having been given for the advance, the advanced rate must be presumed to be unreasonable.

8.

The gravamen of the complaint was THE INCREASED RATES THEMSELVES. If the relation between the rates was considered by the Commission as justifying the order, it was only one ground. There were others.

9

The suit in court was on the order. The order may be said to be the cause of action. The order forbids the class 3 less 20 per cent rate itself and does not forbid the maintenance of any relation between the C. L. and L. C. L. rates as being unlawful.

Respectfully submitted.

L. A. SHAVER,
Solicitor,

P. J. FARRELL,
Attorney,
For Appellee.

O

Supreme Court of the United States.

No. 201.—October Term, 1906.

The Cincinnati, Hamilton and Dayton Railway Company et al., Appellants, *vs.* The Interstate Commerce Commission.	Appeal from the Circuit Court of the United States for the Southern District of Ohio.

[May 13, 1907.]

Mr. Justice White delivered the opinion of the Court.

Official Classification territory embraces that portion of the United States lying between Canada on the north, the Atlantic Ocean on the east, the Potomac and Ohio Rivers on the south and the Mississippi River on the west. This territory includes what is known as Central Freight Association territory and Trunk Line territory, both being governed by the Official Classification. The Central Freight Association territory comprises the area west of Pittsburg and Buffalo, including the lower peninsula of Michigan and east of a line from Chicago to St. Louis, the Mississippi River from St. Louis to Cairo and north of the Ohio River. Trunk Line territory lies north of the Potomac River and east of Pittsburg and Buffalo. Whilst Official Classification governed throughout the whole of Official Classification territory, the rates throughout the whole of the Official Classification territory were not uniform because of a difference of rates prevailing in the subdivision, that is, in the Central Freight and Trunk Line territory. Thus although on shipments from points in the Central Freight Association territory to points in the Trunk Line territory or *vice versa* rates were the same for similar distances, yet on shipments between termini wholly within one or the other of these territories the rates varied because of the different rules governing rates which prevailed as to traffic exclusively moving in that particular territory.

The first classification adopted by the railroads to control in the territory above described as Official Classification territory was made contemporaneously with the going into effect of the act to regulate commerce, presumably to comply with that act, and took effect on April 1, 1887. From that date, until January 1, 1900, nineteen general classifications of freight, numbered from 1 to 19, were at various times adopted to govern in Official Classification territory. The articles embraced in these classifications were divided into classes, numbered from 1 to 6, the rate increasing as the number of the class decreased. From the beginning, until

June 1, 1891, common soap in boxes in carloads was rated as fifth class, and fourth class for less than carloads. On the last-named date, in consequence of an order entered by the Commission on a complaint, as to the classification of common soap in carloads, made by Procter & Gamble, soap manufacturers of Cincinnati, Ohio, soap in carloads was reduced to sixth class. This classification continued to govern until January 1, 1900, when a new classification, known as Official Classification No. 20, went into effect, by virtue of which soap in carloads was advanced from sixth to fifth class and soap in less than carloads was advanced from fourth to third class.

After the going into effect of Classification No. 20, the Procter & Gamble Company, successor of the firm of Procter & Gamble, complained to the Interstate Commerce Commission in respect to the alterations made in the classification of common soap. The petition recited the prior complaint by the firm of Procter & Gamble, and the making in 1890 of the order which led to the reduction from fifth to sixth class, heretofore referred to.

It was charged in the petition that in Official Classification No. 20 there had been an inequitable selection of particular articles and an increase in the rates upon such articles alone by the device of changing them from a lower to a higher class, for the sole purpose of increasing revenues to cover an alleged increase of cost of operation of the railroads, and that "by such course defendants have subjected and do thereby subject the said traffic in the articles changed, including common soap in carloads and less than carload lots, to an undue and unreasonable prejudice and disadvantage with respect to the traffic in all of the articles whose classification was not changed in Official Classification No. 20." It was further alleged as follows:

"If there are any qualities and conditions which, though not considered by defendants at the time of the adoption of said Classification No. 20, justify, nevertheless, the making of any or part of said changes, the same, at any rate, do not apply to common soap in carloads or less than carload lots. The same should, at least, have remained in sixth class in carload lots, as ordered by this Commission as aforesaid, and in fourth class in less than carload lots, so as to maintain the proper relation and difference of rates between carload and less than carload lots. The changing of particular articles as aforesaid from lower to higher classes for the sole purpose of increasing the revenues of the railroads interested therein, is not a condition or circumstance justifying the said change of classification in common soap."

It was prayed that an order might be entered requiring the Cincinnati, Hamilton and Dayton Railroad Company and seven other named railroad companies, forming various connecting and joint lines of railroad in the territory governed by Official Classification No. 20, to "cease and desist

from refusing to carry common soap in carload lots at sixth class rates, and from refusing to carry common soap in less than carload lots at fourth class rates." After the filing of the petition and before answer, Official Classification No. 20, was, in part, changed by making a new class, intermediate classes three and four for soap in less than carload lots and on some other articles, this class being determined by giving the articles in question the benefit of a reduction on the third-class rate of 20 per cent, provided the application of the 20 per cent reduction did not reduce the charge below the fourth-class rate, in which event the 20 per cent reduction should not be fully applied, but would only be applied to the extent necessary to make the rate not less than fourth class. The classification thus operating is spoken of as 20 per cent less than third class, but not less than fourth class, and we shall speak of it hereafter in this way.

In the answers filed the defendants in substance denied that common soap was improperly classified in Official Classification No. 20, originally or as modified, or that an unreasonable or unlawful rate was exacted for the carriage of soap, or that the defendants subjected the soap traffic to any undue or unreasonable prejudice, disadvantage or discrimination.

The taking of testimony was ended on September 26, 1900, and the report and opinion of the Commission was filed about two and a half years thereafter, viz., on April 10, 1903. (9 I. C. C. Rep. 440.) As respects putting carload soap in the fifth class, the Commission refrained both from deciding that the classification was unreasonable *per se* or that its reasonableness had been affirmatively established. It said:

"We regard the primary and controlling question in this case as a question of classification; that is, of *relative rates*, and dispose of it accordingly. In that view it is sufficient to hold that carload soap is not improperly placed in the fifth class, and that fifth-class rates therefore are not shown to be unlawful. So long as most articles entitled to as low rates as carload soap are put in the fifth class and required to pay fifth-class rates, we are not warranted, on the evidence before us, in condemning the same rating for that commodity. This disposition of the case, however, will not authorize the retention of carload soap in fifth class if the classification of other articles with which soap is compared should be reduced, nor will anything now decided preclude the Commission from holding, in an appropriate proceeding, that fifth-class rates in this territory are excessive."

In regard to the less than carload classification of common soap, after directing attention to the fact that such traffic had always been fourth class until January 1, 1900, the Commission said:

"A presumption that such rates are reasonable arises from the voluntary action of the carriers in keeping those rates in effect during such a long period, and that presumption has not been overcome, in our judgment, by the evidence presented in this case."

It was also found that certain rules set out in the findings governing carloads of mixed freight, permitting the carriage of the same at carload rates, coupled with the increase in the long standing less than carload rates on soap, operated a strong discrimination in favor of meat packers who manufactured soap, against manufacturers who were mainly engaged in manufacturing and selling soap. So also the Commission held that the change as to the classification of soap in less than carload lots, besides involving the payment of higher rates for less than carload shipments, had brought about rate relations different from those previously existing between shippers of soap in Official Classification territory. Thus it was found that as a result of the new method of classification a shipper located at New York city could ship therefrom to practically all points in New England and a large number of points in New York State without paying higher than fourth-class rates, while a shipper located at Cincinnati could not ship northerly or northwesterly therefrom, more than about sixty miles, without paying an advance over fourth-class rates. The Commission expressly declared that "the difference of fifteen cents between fifth class and third class, which was in effect as between carload and less than carload shipments from January 1, to March 10, 1900," the time during which Official Classification No. 20 prevailed, before it was modified by the percentage reduction as to soap in less than carload lots "would plainly be excessive," and that the change operated by the percentage modification in question occasions a difference "which varies according to a given per cent, as applied to different scales of rates, appears to be inequitable and unjust, and the fact is so found."

In the order, as entered, the Commission dismissed so much of the complaint as referred to the classification of common or laundry soaps in carloads, and the defendants were "notified and required to cease and desist, on or before the 15th day of June, 1903, from charging, demanding, collecting or receiving for the transportation of common or laundry soap in less than carload quantities charges or rates per one hundred pounds, equal to twenty per cent less than rates fixed by them for the transportation of articles, designated as third class in their established freight classification, called and known as the 'Official Classification,' which said twenty per cent less than third-class rates for the transportation of common or laundry soap in less than carloads are found and determined in and by said report and opinion of the Commission to be in violation of the act to regulate commerce."

The railway companies not having complied with the order, this proceeding was commenced by the Commission in the Circuit Court of the United States for the Southern District of Ohio, under the direction of the Attorney General of the United States, to enforce compliance therewith.

As respects the alleged unlawful character of the change in the classification of soap in less than carload quantities, it was charged in the petition as follows:

"And the petitioner charges that the action of the defendants in raising the classification of common or laundry soap in less than carload quantities, on December 29, 1899, from fourth class to third class, and subsequently, on March 10, 1900, changing the classification of common or laundry soap in less than carload quantities to twenty per cent below third-class rates, the same being more than fourth-class rates, was in violation of the act to regulate commerce; and petitioner further charges that the rates charged by the defendants since December 29, 1899, for the transportation of common or laundry soap in less than carload quantities are in violation of section 1 of the act to regulate commerce, in that they are unreasonable and unjust; and said rates are and have been in violation of section 3 of said act, in that said rates, based upon the classification aforesaid, give an undue and unreasonable preference or advantage to other descriptions of traffic, and subject common or laundry soap in less than carloads to an undue prejudice and disadvantage. The petitioner further charges that the change in classification by the defendants, made effective about December 29, 1899, whereby common or laundry soap in less than carload quantities was changed from fourth to third class, and the change in classification by the defendants, made effective March 10, 1900, whereby common or laundry soap in less than carload quantities was charged more than four[illegible]-class rates, to wit, twenty per cent below third-class rates, were in v[illegible]ation of said act to regulate commerce, in that said changes were unreasonable and unjust, and result in unlawful discrimination and prejudice against common or laundry soap in less than carload quantities, and against localities in Official Classification territory, wherein commodities are produced and transported, and against producers, shippers, dealers and consumers in said territory."

In the various answers filed issue was taken upon these averments without any intimation that any of the issues so tendered were improper to be raised.

The case was heard in the Circuit Court on the evidence before the Commission and on additional evidence taken by the defendants, principally directed to showing the extra cost incident to handling and transporting freight in general in less than carload lots. The complainant took no additional testimony. The Circuit Court decided in favor of the Commission, (146 Fed. Rep. 559,) holding that the evidence not only failed to justify the change of classification complained of, but established that the advance in rates caused by the increase in the classification of soap in less than carload quantities was not only unreasonable and unjust, but also resulted in an unlawful discrimination and preference between shippers. The case was then appealed to this court.

Before considering the fundamental question upon which the order of the Commission and the decree of the court enforcing it rest, we dispose of

certain propositions relied upon by the railway companies, because to do so we think will clear the way for an analysis of the final question arising, stripped of confusing and irrelevant considerations. We think the Commission in making an investigation on the complaint filed by the Procter & Gamble Company had the power, in the public interest, disembarrassed by any supposed admissions contained in the statement of complaint to consider the whole subject and the operation of the new classification in the entire territory, as also how far its going into effect would be just and reasonable, would create preferences or engender discriminations; in other words, its conformity to the requirements of the act to regulate commerce. And that such was the view taken as well by the railway companies as by the Commission during the course of the investigation before that body, is, we think, beyond doubt. Thus, on the examination of the very first witness called for the complainant before the Commission, counsel for the railway companies stated that in his opinion the pending investigation had "no significance except as preliminary to a judicial proceeding." And when at the threshold a question was raised in the examination of the same witness as to the competency of evidence on a subject not directly expressed in the complaint, but bearing upon the effect of the new classification, the Commission declared it was competent to show the general effect of such classification in the territory through which it operated. Our assent to this view of the power of the Commission conclusively, of course, also disposes of the contention that the court was without authority to determine the validity of the order of the Commission by the scope of the act to regulate commerce, because of an admission asserted to exist in the complaint originally filed before the Commission. It is needless, moreover, to say that the course of the proceeding before the Commission which we have stated, strips the case of any element of surprise or possible prejudice.

The Commission, as we have seen, did not find that the rate promulgated in Official Classification No. 20, as to soap in carloads, was unreasonable, preferential or discriminatory. From this it is elaborately argued that the order rendered by the Commission demonstrates its own error. This proceeds upon the following theory: For a number of years prior to 1891 soap in less than carloads was in the fourth class, and soap in carloads in the fifth class. By the order of the Commission, rendered in 1891, as we have seen, soap in carloads was put in the sixth class. By Official Classification No. 20 soap in carloads was moved up to fifth and soap in less than carloads from fourth to third class. The change made by the new classification destroyed the previous relation since the difference between the rates governing third and fifth classes made by the new was greater than the difference between the fourth and sixth classes as obtaining in the prior

classification. And this was one of the complaints made by the Procter & Gamble Company concerning the new Classification No. 20. The carriers, it is said, to meet this objection, adopted, after the complaint was filed, the modified classification of 20 per cent less than third class but not less than fourth class. The effect of this reduction, it is declared, was to cause soap in less than carloads to occupy just the same relative position to soap in carloads as it had occupied in the classification existing prior to the going into effect of Official Classification No. 20. And as the order of the Commission did not change the classification as applied to soap in carloads made by Official Classification No. 20, the proposition is that that body in holding the modified classification of 20 per cent less than third class and not less than fourth class to be illegal, destroyed the relation which the Commission had created by its former order, and which it was the purpose of the complaint of the Procter & Gamble Company to restore. But the argument takes for granted the very question for decision, that is, whether the modified classification of 20 per cent less than third class, but not less than fourth class, operated to continue the relation between soap in carloads and soap in less than carloads, which prevailed throughout Official Classification territory before the making Official Classification No. 20. That the proposition thus begs the whole question, is demonstrated by the mere statement that both the Commission and the court below decided that Official Classification No. 20, as modified as to soap in less than carloads by the percentage order, was unreasonable, discriminatory, and by its effect created preferences among manufacturers and shippers of soap which had not existed prior to the new classification. When the real significance of the proposition is thus seen it amounts to this, that we must assume that both the court below and the commission erroneously decided the controversy, and upon this mere assumption proceed to reverse their action. But our duty, not to assume but to decide the case, cannot be thus obscured.

Laying aside, however, the questions of unreasonableness of discrimination, and of preference and the consequent destruction, if these effects exist, by the new classification of the prior relation between soap in carloads and less than carload quantities, let us briefly consider the intrinsic merit of the proposition relied upon. It is that prior to Official Classification No. 20 there was a just relation between soap in carloads in class 6 and soap in less than carloads in class 4. Of course this admits that such just relation was destroyed by Official Classification No. 20 as originally put in force, since thereby soap in carload lots was placed in class 5 and soap in less than carloads in class 3, between which classes there was a greater difference relatively in rates than theretofore existed between the two

commodities in the prior classification. This inequality the carriers declare was obviated after the complaint was filed, by the modified classification as to soap in less than carload lots of twenty per cent less than third class but not less than fourth class. By this means it is insisted the relation previously existing was recreated, and any disturbance engendered by Official Classification No. 20 was cured. Now, on the surface of things, the contradiction of the position is manifest. The modified rate on its face did not propose to put soap in less than carloads throughout the whole territory in a uniform class, but in the class which might result from the operation of a percentage basis controlled by whether or not the application of the percentage might or might not take soap out of one class and into another. In other words it clearly contemplated that by the varying rates to which the percentage would be applied, soap in less than carloads would be left in portions of the territory in the fourth class and in a higher class in other portions. How, in view of this it can be in reason, conceived that the admitted uniform classification prevailing prior to the percentage rule could possibly continue under a classification inherently wanting in uniformity, we fail to understand.

But put the foregoing considerations aside. The complaint as to the order of the Commission is that it disturbed the previous relations between soap in carloads and less than carloads. What was the order? In effect it condemned and directed the carrier to desist from enforcing the modified percentage classification. At the worst view for the carrier the order complained of can only be taken as persuasively indicating—and such was the view intimated in the opinion of the Commission—the duty of the carriers to return soap in less than carloads to class 4, in which it had been uniformly placed prior to the going into effect of Official Classification No. 20. The real grievance which the railway companies must have reduces itself to this, that the order may lead to the putting of soap in less than carloads in class 4. But the very percentage basis which the carriers adopted contemplated that in some portions of the territory and somewhere the effect of the modification by a percentage reduction might be to put soap in less than carloads in the fourth class else why the limitation, "but not less than fourth class contained in the modified classification.

We are thus brought to the fundamental question, which is, did the percentage classification lead to rates which were unreasonable, unjustly discriminatory or unduly preferential? If either was the result, the order directing the carriers to desist from enforcing the classification in question was proper.

We take up the related questions of discrimination and preference because the arising of such consequences from the classification more sali-

ently appear, and because the demonstration of such results is in a measure elucidated by what we have previously said. Concerning the discrimination the Commission said:

"Whatever the effect of a percentage less than third class for less than carload shipments of other commodities, taking that rating under the classification, may be, it plainly works discrimination against complainant and other western shippers of soap in less than carload lots, in favor of their competitors in the East, when the present situation is compared with that which existed under the old fourth-class rating, ..."

And this finding was expressly concurred in by the Circuit Court. In pointing out the mode by which the modified classification operated, the result in question, the Commission said:

"These differences are due to variations in the scales of rates prevailing in the different sections. The twenty per cent less than third-class rating for less than carloads applies to all shippers of less than carload lots of soap throughout the entire territory, but it increases some rates more than others, and leaves some as they were before it was adopted. When, for example, under the application of that rule, the rate from Cincinnati to Boston is increased four cents, and the rate from New York to Boston remains the same, as compared with the fourth-class rates formerly in effect, it is plain that this method of determining rates upon a percentage basis operates unequally upon the different shippers of less than carload quantities in that territory."

The statute gives *prima facie* effect to the findings of the Commission, and when those findings are concurred in by the Circuit Court, we think they should not be interfered with, unless the record establishes that clear and unmistakable error has been committed. (See *Cin., N. O. & Tex. Pac. Railway* v. *Int. Com. Com.*, 162 U. S. 184, 194; *Louisville, &c. Railroad Co.* v. *Behlmer*, 175 Ib. 648, 672.)

It is insisted that this is a case of that character. How, in reason, it is urged, can it be said that discrimination or preference, which did not before exist, was or could be produced from the mere application to the prior rates of a uniform percentage reduction? This, however, obscures the fact that the 20 per cent reduction was not uniform, but was that percentage less than third class, with the qualification "but not less than fourth class." In other words, the modified percentage reduction was not a fixed percentage, but was one which might vary, depending upon the result which would be brought about by applying the rule. Putting, however, entirely aside this view, let us consider only the result of the working of the rule on the basis of 20 per cent less than third class. The factors to be considered are these: *a*, the relation existing prior to the going into effect of Official Classification No. 20; *b*, the operation of that classification over the

whole of Official Classification territory; *c*, the percentage modification of 20 per cent less than third class as to soap in less than carloads, and also its operation over the whole territory; and, *d*, the varying rates of charges in the separate spheres into which the Official Classification territory was divided, viz., Central Freight Association territory and the Trunk Line territory. Now, testing the matter by these criteria, does it appear, as contended, that the findings of the Commission and the court, as to resulting preferences and discrimination, are so contradictory and erroneous that we should disregard them? The proposition that they were must rest upon the assumption that the application of a fixed percentage reduction to existing rates whilst it might vary them could not possibly change their relation. But this assumes that the variation which existed between rates in the different spheres of Official Classification territory was only a difference in the sum of the rate prevailing in one territory from that which prevailed in the other as to the same class. But this is a mistake, since there was also a difference in the two separate spheres of territory as to the margin of difference between the different classes of rates governing in the two territories. Thus there was in Central Freight Association territory not only a higher rate for commodities in the third class than prevailed in Trunk Line territory for the same class, but there was also in the Central Freight Association territory a wider difference between the rates governing commodities in the third class and those controlling commodities in the fourth class. It follows from this that where in any given case the 20 per cent reduction was applied to the increased rate which had arisen from having placed less than carload soap in the third class, if the application of the full 20 per cent reduction was not sufficient to reduce the amount to the fourth class, the commodity would pay more than fourth class. In other words, although the commodity in the case stated would get the full benefit of the 20 per cent reduction from the third-class rate, as giving it that benefit did not reduce to the fourth class rate the commodity would yet pay higher than fourth class rate. It also follows that if in any case where the 20 per cent reduction was applied, if the result of applying it because of the narrowness of the difference between third and fourth class in that territory operated to reduce the same to the fourth class, the commodity would be left exactly in the class in which it stood before, that is, fourth class. By this it indubitably resulted that in a large degree in one of the subdivisions of the same classification territory soap in less than carloads remained in fourth class, and in the other took a higher class. And this illustrates the correctness of the findings of the Commission and of the court as to the preference resulting from applying to a territory governed by one classification a rule of percentage which, while assuming unity, produced diversity,

and which, while asserting equality of class, engendered inequality. Of course, we confine our decision to the case before us.

And the views heretofore expressed serve also to dispose of the contention that, although it be conceded that discrimination and preference was created, yet the carrier should not have been ordered to desist from enforcing the modified percentage classification, because the discrimination and preference, if any, were not the result of the operation of that classification, and, moreover, were not repugnant to the act to regulate commerce, because they were simply the consequence of natural competive advantages enjoyed by shippers in the sphere of the Trunk Line territory, which were not possessed by shippers in that other portion of Official Classification territory, known as Central Freight Association territory. But this simply involves a restatement of the misconception which we have already pointed out. The discriminations and preferences which the Commission and the court below found to exist were results arising from the application to the conditions prevailing in Official Classification territory of the modified percentage classification. In other words, the order forbidding the enforcement of the modified percentage classification was based on the finding that that classification disturbed the rate relations theretofore existing in Official Classification territory and created preferences and discriminations which would disappear if the further enforcement of the changed classification was prevented.

This brings us to the final contention made on behalf of the railway companies, viz., that the order of the Commission was not lawful, because not within the power conferred by the act of Congress. This is, we think, largely disposed of by what we have previously said as to the nature and scope of the investigation which the Commission was authorized to make and the redress which it was empowered to give irrespective of the particular character of the complaint by which its power may have been previously invoked. Whatever might be the rule by which to determine whether an order of the Commission was too general where the case with which the order dealt involved simply a discrimination as against an individual or a discrimination or preference in favor of or against an individual or a specific commodity or commodities or localities, or as applied to territory subject to different classifications, and we think it is clear that the order made in this case was within the competency of the Commission, in view of the nature and character of the wrong found to have been committed and the redress which that wrong necessitated. Finding, as the Commission did, that the classification by percentage of common soap in less than carload lots operating throughout Official Classification territory, brought about a general disturbance of the relations

previously existing in that territory, and created discriminations and preferences among manufacturers and shippers of the commodity and between localities in such territory, we think the Commission was clearly within the authority conferred by the act to regulate commerce in directing the carriers to cease and desist from further enforcing the classification operating such results.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.